BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE

O.A. NO. __________ /2023 [WZ]

The Goa Foundation …..Applicant

vs.

The State of Goa and Ors. …Respondents

Compilation – I

INDEX

Sr. No.	Particulars	Page No.
1.	Synopsis and List of Events	**A - D**
2.	Memo of Application	**1 - 16**
3.	Affidavit	**17 - 18**

PLACE – MAPUSA, GOA

DATE – 13.04.2023

Advocate for the Applicant

BEFORE THE HON’BLE NATIONAL GREEN TRIBUNAL (WESTERN ZONE BENCH), PUNE

O.A. NO. __________ /2023 [WZ]

The Goa Foundation ….Applicant

V/s

The State of Goa & Ors …Respondents

SYNOPSIS AND LIST OF DATES AND EVENTS

This Original Application is filed to seek this Hon’ble Tribunal’s urgent intervention to save, recover and restore the public Vainguinim beach at Dona Paula from the *mala fide* and expropriatory actions of the owner and present managers of the luxury resort, Cidade De Goa, which have premises adjoining the beach. The respondents have illegally constructed a long, concrete structure/embankment across a stretch of the public beach, about 10 mts away from the hotel’s present boundary, in flagrant and open mockery of the Public Trust doctrine laid down in several judgements of the Hon’ble High Courts and Supreme Court, one of them dealing explicitly with the same (Vainguinim) beach. The illegal construction is located in CRZ-I area between the LTL and HTL, and has damaged the beach tremendously. In addition to the damage caused to the beach ecosystem – the construction, made from cement and concrete, has created a dead zone out of a major segment of the living beach – it has also marred the natural beauty of the beach. The Applicant is approaching this Hon’ble Tribunal to cure the breach of the public trust by the authorities, as it apprehends that this is the first stage by which the resort hopes to appropriate the beach area behind the new structure.

CHRONOLOGY OF DATES AND EVENTS

Sr. No.	**Date**	**Particulars of events or documents if any**	**Annexure and Page**
1.	1982	Luxury Hotel, 'Cidade De Goa', constructed on land abutting a public beach-Vainguinim Beach	
2.	1982-1992	'Cidade De Goa' hotel creates obstacles in the public accessing Vainguinim Beach, including by closing a traditional access /pathway to the beach.	
2.	1991 -1992	Several citizens, including this Applicant, approach this Hon'ble Court challenging the limitations imposed by the Hotel on public access to Vainguinim Beach	
3.	25th Apr. 2000	This Hon'ble Court *vide* its judgement in W.P. 36/1992 *inter alia* finds that Vainguinim Beach is a public beach, and recognizes the right of the public to access this beach.	**Ann. 2** Colly, at pgs. 24 - 33
4.	20th Jan. 2009	Hon'ble Supreme Court *vide* its judgement in C.A. 4154/2000 dismisses appeal filed by owners of the Cidade de Goa hotel against the order dt. 25.04.2000 of this Hon'ble Court	**Ann. 2** Colly, at pgs. 34 - 72
5.	April 2021	Cidade De Goa hotel undertakes and completes construction of a permanent, concrete embankment - like structure cutting across a major segment of the Vainguinim Beach 15 metres from plot boundary	

6.	April 2021	Complaints made to the Goa Coastal Zone Management Authority [G.C.Z.M.A.] by some local residents regarding construction work undertaken by the Respondent, including the use of a JCB bulldozer to excavate parts of the Vainguinim beach	
7.	21st April 2021	Applicant makes a complaint to the Goa Coastal Zone Management Authority [R-6 herein] against construction on the Vainguinim Beach by the Respondent	**Ann. 4 Colly,** at pgs. 94 - 95
8.	April - May 2021	G.C.Z.M.A. carries out site inspections and issues a show cause notice to the Hotel, but does not stop the construction work on the Vainguinim Beach – due to which construction is completed by the Hotel	
9.	May 2021	Resp No 3 completes the construction of the structure.	
10.	7th June 2021	Petitioner makes a fresh complaint to the Chief Secretary, Government of Goa, seeking the removal of the concrete structure built by the Hotel.	**Ann. 4 Colly,** at pgs. 96 - 97
11.	21. 09.2021	The Applicant approaches the Hon’ble Bombay High Court at Goa regarding the construction of the impugned structure, in the form of PIL 29/2022.	
12.	May 2022	R. 3 company utilizes structure for putting up tents, stages etc. for its private use	

13.	07.10.2022	Hon’ble High Court disposes of the PIL 29/2022 and grants applicant the liberty to approach this Hon’ble Tribunal as this falls within CRZ.	**Ann. 11**, at pgs. 167 - 168
14.	13.04.2023	The Present OA is filed.	

PLACE: Mapusa, Goa

DATE: 13.04.2023

ADVOCATE FOR THE APPLICANT

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH), PUNE

Janardhan S. Parshekar
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025

O.A. NO. _______ OF 2023

(Under Sections 14, 15 and 18 of the
National Green Tribunal Act 2010)

BETWEEN:

1. **THE GOA FOUNDATION,**
   through its secretary, Dr. Claude Alvares,
   age 74 years, having Regd. Office at
   Room No 7, Above Mapusa Clinic,
   Mapusa, Goa - 403507,
   Contact No. – 8007558624,
   Email id: goafoundation@gmail.com .

...APPLICANT

AND

1. **THE STATE OF GOA,**
   through its Chief Secretary,
   c/o Secretariat,
   Porvorim, Goa - 403521,
   Email id: cs-goa@nic.in,
   Contact No. - 0832-2419402.

2. **THE GOA COASTAL ZONE MANAGEMENT AUTHORITY (GCZMA),**
   through its Member Secretary,
   Dempo Towers, 4th floor,
   Patto, Panaji, Goa – 403001.
   Email id: goacoastalzone@gmail.com,
   Contact No. - 0832-2407186.

3. **M/S FOMENTO RESORTS & HOTELS LTD,**
   Having office at Cidade de Goa,
   Vainguinim Beach Goa - 403004,
   Contact No. - 0832-2454545,
   Email ID:- shareholders@frhl.in.

....RESPONDENTS

(Above addresses are registered addresses of parties)

NOTARY GOVT. OF GOA (INDIA)
Janardhan S. Parshekar
Mapusa Bardez-Goa
Regd. No. 218/10
Expiry Date
29/01/2025

THIS APPLICATION MOST RESPECTFULLY SHOWETH:-

1. The address of the Applicants' counsel is given below for the service of notices of this Application.

2. The addresses of the Respondents are given above for the service of notices of this Application.

3. This Application deals with a "substantial question relating to the environment," viz., regarding the restoration of the Vainguinim Beach in Dona Paula, North Goa, now encroached by an illegal embankment/ structure raised by the Resp.No.3. This Application has been filed to seek this Hon'ble Tribunal's intervention to save, recover and restore the public Vainguinim beach at Dona Paula from the *mala fide*, expropriatory actions of the owner (Resp.No. 3) of the luxury resort, Cidade de Goa, which have premises adjoining the beach. The respondents have illegally constructed a long, concrete structure/embankment across a stretch of the public beach falling in CRZ-I area, about 15 m away from the hotel's present boundary, in flagrant and open mockery of the CRZ notification and of the Public Trust doctrine laid down in several judgements of the Hon'ble High Court of Bombay at Goa, and the Hon'ble Supreme Court, one of them dealing explicitly with the same (Vainguinim) beach. The illegal construction has damaged the beach, and constitutes an interference with the rights of the ordinary public to access and enjoy the beach without any impediments and hazards. In addition to the damage caused to the beach ecosystem – the construction, made from cement and concrete, has created a dead zone out of a major segment of the living beach – it has also marred the natural beauty of the beach. The Applicant is

approaching this Hon'ble Applicant to cure the breach of the public trust by the authorities and of the CRZ, as it apprehends that this is the first stage by which the resort hopes to appropriate the beach area behind the new structure. Photographs of the beautiful beach and of the illegal construction which is in the form of a cement-concrete embankment exceeding 100 metres in length are enclosed at **Annexure 1 Colly**. The structure constitutes a continuing violation of the CRZ Notification.

ISSUES BEFORE THE HON'BLE TRIBUNAL

4. The issues raised before this Hon'ble Tribunal are the following and they fall within the jurisdiction of this Hon'ble Tribunal under both Sections 14 and 15 of the NGT Act:

   a) Whether the authorities can permit or refuse to take action when an illegal embankment or structure is raised on a public beach protected by the public trust doctrine and by the CRZ notification?

   b) Whether such a structure can be erected in the area between the High Tide Line and the Low Tide Line, which is CRZ I and NDZ ?

   c) Whether the right of the public to access the entire Vainguinim Beach can be restricted by any party when it is an acknowledged and undoubted fact that the Vainguinim beach is a public beach meant for the enjoyment of all?

S. Parsheka
Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025

Particulars of the Applicant

5. The Applicant is an environmental NGO based in Goa who has approached this Hon'ble Tribunal, the Hon'ble

High Court of Bombay at Goa, and the Hon'ble Supreme Court, time and again over the past three decades, in public interest, for enforcement of the provisions of environment, wildlife, forest, coastal regulation, land use, pollution and mining laws. Pertinently, the Applicant herein was a party in cases filed before the Hon'ble High Court of Bombay at Goa and the Hon'ble Supreme Court when attempts were made previously by the same hotel to privatize the beach and deny public access.

Particulars of the Respondents

6. The Respondent No 1 is the State of Goa. The Respondent No 2 is the Goa Coastal Zone Management Authority (G.C.Z.M.A.). The Respondent No 3 is the owner of the Resort which has constructed the concrete embankment across the Vainguinim beach.

n S. Parshekar
a Bardez-Goa
d. No. 218/10
Expiry Date
29/01/2025

Facts Constituting the Cause

7. The Vainguinim Beach is a public beach located on the estuarine front of the bay adjoining Dona Paula. It is in fact part of the larger Dona Paula Bay. The beach is small but popular and visited by local villagers as well as tourists. Around 1982, a luxury hotel by the name of 'Cidade de Goa' was constructed by M/s Fomento Resorts Pvt Ltd. (Resp.No.3) on the land abutting the public beach. The resort's owners attempted to privatize the beach and created difficulties for the public to visit the beach, including closure of a traditional pathway. Several citizens, including this Applicant approached the Hon'ble High Court of Bombay at Goa in PILs and both the Hon'ble High Court of Bombay at Goa as well as the Supreme Court (wherein appeals were subsequently filed)

firmly directed that the two accesses to the beach were to be kept open and free for the public to directly access the beach, as Vainguinim beach is a public beach and the Public Trust doctrine squarely applies to its conservation and enjoyment by the general public and future generations.

8. Applicant quotes below from the Hon'ble High Court's judgement dated 25.04.2000 in Writ Petition No.36/1992 on the unequivocal and undoubted fact of the Vainguinim beach being a public beach.

> "Para 7. At the outset, it is to be noted that there is no dispute between the parties that Vainguinim Beach is a public beach and the public have every right to access the same through the property bearing old survey No.787."

9. The Hon'ble Supreme Court stated as follows with regards to the applicability of the public trust doctrine in this matter:

> "40. We reiterate that natural resources including forests, water bodies, rivers, sea shores, etc., are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to the uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the Court can invoke the public trust doctrine and take affirmative action for protecting the right of the people to have access to light, air, water, and also for protecting rivers, seas, tanks, trees, forests and associated natural eco systems."

ardhan S. Parshekar
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025

10. The two judgements referred to above, ie. of the Hon'ble High Court of Bombay at Goa dt. 25.04.2000 (*Minguel*

Martins & Ors vs M/s Sociedade e Fomento industries Pvt Ltd [2000 BOMCR (4) 448] and of the Hon'ble Apex Court [*Fomento Resorts and Hotels Ltd & Anr Vs Minguel Martins & Ors [(2009) 3 SCC 571*] are enclosed as **Annexure 2 Colly.**

The Illegal Concrete Construction raised by Respondent No.3 on Vainguinim Beach:

11. During the months of April and May 2021, during the Covid-related curfew imposed on the public, the Respondent 3, working even at nights, commenced and completed construction of a permanent, concrete embankment-like structure cutting across a major segment of the beach, claiming to have NOCs allegedly granted by the GCZMA and despite number of public protests and demonstrations from citizens. Around 21.04.2021, residents of the area noticed that a portion of the public beach was being excavated using a JCB, and construction of a cement structure approximately 13-15 m away from the existing boundary and retaining wall of the respondent hotel was underway. The cement structure was being constructed in the intertidal zone, within the HTL limit and which is squarely part of the public beach. Immediately, at the onset of the construction activity itself, complaints were made to the GCZMA (Resp.No.2) by residents of the area. The relevant extract of the Final Approved CZMP for Goa showing the Vainguinim Beach stretch is enclosed as **Annexure 3.**

dhan S. Parsheka,
apusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025

12. The Applicant too, upon becoming aware of the illegal activity through social media, and being informed that some NOC for the work had been reportedly issued by the Goa Coastal Zone Management Authority (GCZMA),

protested to the GCZMA vide its letter 21.04.2021, against the use of a bulldozer by the respondent hotel to excavate the sandy portion of the beach. Subsequently, after visiting the site and seeing the structure erected right across the beach obviously to suit the hotel's purposes, the Applicant addressed a letter to the Chief Secretary of the Goa government dated 07.06.2021 on the dereliction of its duty to protect the public beach, drawing to his attention the orders passed by the High Court and Supreme Court specifically on the handling of beaches as part of the public trust doctrine. Applicant therefore requested the State Govt to remove the offending structure forthwith. Copies of the Applicant's letters dated 21.04.2021 to the GCZMA and 07.06.2021 to the Chief Secretary are enclosed as **Annexure 4 Colly**.

13. It appears that based on citizens' complaints, the GCZMA conducted some site inspections and issued a show cause notice to the Respondent hotel company. The GCZMA, however, did not stop the construction work, even though it was taking place on the beach itself which is public servitude. As a result, due to the complicity of the GCZMA, the Resp No 3, working day and night, completed the construction of the structure by the end of May 2021. Photographs of the construction while it was underway – some of which were enclosed with the letters to the Chief Secretary – and media reports of the same are at **Annexure 5 Colly**.

n S. Parsheka,
sa Bardez - Goa
Rd. No. 218/10
Expiry Date
29/01/2025

14. The Applicant submits that despite the best attempts of the citizens and this Applicant to get the authorities to take action, no authority has acted thus far, apart from site visits, as the resort owners are persons who can exert enormous influence on public authorities. It is, however, necessary that the offending structure be removed at the earliest and the beach is restored to its original status,

under the supervision of an expert body like the National Institute of Oceanography (NIO), Goa, at the cost of the Respondent No. 3.

15. The structure, which actually appears to be an embankment, is approximately of 100 Mt length, 50 cm width and 1 Mt height, erected with cement concrete on the sand beach. It has already caused severe damage to the beach. The portion behind the new structure has already turned into a "dead zone" for all marine life on the beach. Applicant fears that by the said means of illegal impoundment, half the beach will now go out of the hands of the public, as the resort's security guards are already dissuading visitors to the beach from accessing the portion of the beach between the structure/ embankment, and the hotel. Applicant apprehends that the hotel will thus colonize this portion of the beach and annex it to the property of the hotel for use of beach activities of its guests including beach games, relaxation and serving of food. As it is, the space has been colonised for temporary structures, as can be seen from the photos at **Annexure 6 Colly**. The hotel will then have succeeded in privatising a large portion of Vainguinim beach for itself.

16. As the beach is a public beach, no permissions for development can be granted or obtained for any development by any party as per the Public Trust doctrine. Any measures that may need to be taken to protect the beach (e.g., from erosion) may only be authorized by the State Govt which holds the beach in trust for the enjoyment of the public.

han S. Parsheka
d. No. 218/10
Expiry Date
/01/2025

17. The GCZMA which is the coastal authority for Goa held some hearings on the matter. After some citizens approached the Hon'ble High Court of Bombay at Goa in a P..I.L, the GCZMA was directed by the Hon'ble Court

to take a decision within six weeks, by October 1, 2021. The Applicant was also invited to the hearings. The Applicant attended the same and submitted a written note, with a map, but found that the entire proceeding had turned into a dispute over the nature of the NOC issued by the GCZMA in 2017 for repairs to the hotel's boundary wall (also termed as gadaga / linear wall) and whether the hotel had violated the conditions of the NOC. This does not constitute the cause of the present challenge to the structure or embankment on Vaingunim Beach, which has no NOC whatsoever.

18. The issue of GCZMA's NOC is entirely irrelevant to the issue of the concrete embankment now standing on the Vainguinim beach since the NOC is for repairs to the wall adjoining the property boundary and not for the impugned structure which is 10 or more metres away from the plot boundary and existing wall and parallel. The GCZMA in fact set up a team headed by the Deputy Collector to visit the plot and submit a report. The map attached to the report indicates that while an NOC may have been granted to the hotel to reinforce a wall marking the existing boundary of the property, there is no NOC for the embankment that has been erected 10 metres away on the very beach itself. A copy of the map submitted by the Collector's team which shows the repairs done to the linear wall along the boundary of the hotel is at **Annexure 7**. The resort owners have simply misused the NOC of the GCZMA for repairs to construct a wholly new structure which is distinct and in the middle of the beach itself. This can be seen from the map of the Addl Collector, which shows the wall constructed as per the GCZMA NOC but does not show the wall whose construction is challenged in this application. That new and additional wall is shown in map No.2 created by the applicants which is at **Annexure 8**. A site plan issued by the Director of Land Survey also shows that the boundary of the property is the same as the only in

nan S. Parsheka,
usa Bardez - Goa
gd. No. 218/10
Expiry Date
29/01/2025

the Collector's map and report. Copy of the land survey map is at **Annexure 9**. No authority is empowered to grant any permission or NOC for any permanent structure to be constructed on a public beach. No private party can be granted an NOC to construct a permanent structure on a beach. Beaches are public spaces, for all citizens to enjoy and use. They are covered by the doctrine of Public Trust and the prohibitions of the CRZ notification. The State and its instrumentalities are duty bound to act as custodians of these public endowments and ensure they are kept in a good state of health so that they will also be available for future generations.

19. The Applicant is constrained to come to this Hon'ble Tribunal, to ensure the rights of the citizens over the public beach and the duty of the government and authorities to protect and uphold the same under the public trust doctrine and principles of intergenerational equity.

ohan S. Parsheka,
Regd. No. 218/10
Expiry Date
29/01/2025

GROUNDS

20. Applicant is therefore approaching this Hon'ble Tribunal on the following grounds, amongst others:

    a. The Vainguinim beach is declared a public beach and the rights of the public to access it in its entirety are squarely covered under the doctrine of Public Trust, enunciated by the High Court and endorsed by the Supreme Court in appeal in matters that were connected with this very same beach two decades prior. The entire beach area, also including the area between the HTL and the LTL, is CRZ I and therefore no-development zone in terms *inter alia* of Paras 3 and 8 of the CRZ Notification, 2011. The GCZMA has not given an NOC for the construction of the concrete permanent structure which falls in the ecosensitive CRZ-I area.

b. The illegal construction carried out by the respondent is on the beach, within the intertidal zone of the public beach, in the area where no construction or development works may be permitted, and thus an interference with the rights of the public to access and enjoy the beach. The structure is moreover physically damaging the beach. The failure of the authorities to take action to restore the beach to the public is a complete and total breach of the public trust doctrine.

c. It is on the very same basis that prior attempts by this very hotel to privatize the beach and restricting access to the public were stopped by the Hon'ble High Court of Bombay at Goa in *Minguel Martins & Ors vs M/s Sociedade e Fomento industries Pvt Ltd [2000 BOMCR (4) 448]* and the Hon'ble Apex Court in *Fomento Resorts and Hotels Ltd & Anr Vs Minguel Martins & Ors [(2009) 3 SCC 571]*. Despite these precedents, the Respondent hotel is brazenly making another attempt now to grab public property as its own and to restrict the use and enjoyment of it by the citizens.

ardhan S. Parshekar
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025

d. In *MC Mehta vs Kamal Nath & Ors (1997) 1 SCC 388*, the Hon'ble Supreme Court has held that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. The public at large is the beneficiary of the sea shore, running waters, air, forests and ecologically fragile lands. These resources are meant for public use and cannot be converted for private ownership or control. The Court further held that in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership or commercial use. The aesthetic use and pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the Courts find it necessary, in good faith, for the public good and in public interest to encroach upon said resources.

e. The Applicant submits that this is yet another attempt to privatize a portion of the public beach and restrict access to the same by the hotel. The portion of the intertidal zone of the public beach cannot be claimed as private property. All parts of the sandy beach and beyond are public property and resources – held only in trust under the public trust doctrine by the Government. It is the duty of the authorities to ensure free access and enjoyment of the full beach to all citizens.

S. Parsheka.
Mapusa Bardez - Goa
Regd. No. 218/10.
Expiry Date
29/01/2025

f. The public trust doctrine includes the guarantee of public access to public trust resources with a requirement of public accountability in respect of decision-making regarding such resources.

g. The hotel has absolutely no right to do any work – repair or construction – on the beach which is public property, and no permissions can be granted to a private party for such work. There is neither an NOC nor any other statutory approval for the illegal construction on the beach and none can be granted.

h. This Hon'ble Tribunal has recently issued a detailed judgement questioning the wisdom of such structures, even if drawn up for erosion control. In *C.H. Balamohan vs. Union of India [Extract @*

__Annexure 10__], the Tribunal was considering the issue of human-induced coastal erosion caused by the construction of hard structures, specifically groynes (seawalls which are similar in nature to the concrete embankments put up in this case). After considering multiple scientific studies and expert Reports, the Tribunal in this case noted that groynes and other such hard structures were causing immense destruction to the coastal environment and ecosystem, and that there is need for such hard structures to be replaced with softer erosion control measures, such as beach nourishment, dune planting, etc. The Tribunal ultimately set aside ECs for the construction of 19 groynes in Tamil Nadu, and restrained all Coastal states from constructing further hard structures on beaches pending the updation of their respective CZMPs to reflect high, low and medium erosion stretches along the coastline.

Janardhan S. Parsheka
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025

i. The illegal structure is still there on the beach and therefore constitutes a continuing violation of the CRZ notification.

j. Such other and further grounds that may be urged at the time of hearing.

LIMITATION

21. The issues raised in this Application were first raised before the Hon'ble High Court of Bombay at Goa in the form of P.I.L. W.P. 29/2022, which was filed on 21.09.2021. *Vide* its order dt. 07.10.2022 [enclosed at **__Annexure 11__**] , the Hon'ble High Court has disposed of the said P.I.L, and has granted the Applicant liberty to raise its contentions before this Hon'ble Tribunal. This order dt. 07.10.2022 was uploaded only on 10.10.2022, and the 6 month time period

under Section 14 therefore would begin from 10.10.2022. Unfortunately, the secretary of the applicant society, Dr Claude Alvares, who is the authorised signatory and is conversant with this matter, suffered a serious heart attack towards the end of October 2022 for which he had to be hospitalised at the Goa Medical College and was prescribed three months rest thereafter. Thus, considerable time was lost in preparing this application. The application was ready by 10.04.2022. As such, the present Application has been with a delay of 3 days only, in respect of which the Applicant has moved a separate I.A. for condonation of delay.

REPRESENTATIONS MADE

22. The Applicant has made representations to the Chief Secretary vide letter dated 07.06.2021 and also to the G.C.Z.M.A. The issues raised in this Application were first raised before the Hon'ble High Court of Bombay at Goa in the form of P.I.L. W.P. 29/2022., filed on 21.09.2021, where the Hon'ble High Court disposed of the said P.I.L on 07.10.2022, and granted the Applicant liberty to raise its contentions before this Hon'ble Tribunal.

Janardhan S. Parshekar
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025

PRAYERS

23. The Applicant therefore prays for the following reliefs:

   a) For an order directing the Respondent No. 1 to demolish forthwith in its entirety the concrete structure or embankment constructed on and across the Vainguinim beach approx. 13-15 metres from the existing boundary wall (gadaga / linear wall) of the resort and report compliance;

b) For an order directing the Respondent Nos. 1 and 2 take steps to restore the Vainguinim beach to its original sandy status with expert advice;

c) For an order imposing monetary sanctions against the Resp. No. 3 in terms of polluter pays principle for the illegal construction and for the grave damage caused to public property;

d) For costs of this Application;

e) Any other reliefs this Hon'ble Court may be pleased to grant;

Janardhan S. Parshekar,
Mapusa Bardez - Goa
Regd. No. 218/18
Expiry Date
29/01/2025

For the above reliefs, the applicant is very grateful.

Place : MAPUSA, GOA
Date : 13.04.2023

THE GOA FOUNDATION
Reg. No. 23/GOA/86

Applicant

Through:
Adv. Om D'costa,
G 8 St Brittos Apts, Mapusa, Goa – 403507
[dcostaom@gmail.com, 8007558624]

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (WESTERN ZONE BENCH), PUNE

O.A. NO. __________/2023 [WZ]

The Goa Foundation ...Applicant

vs.

The State of Goa and Ors. ...Respondents

AFFIDAVIT

I, Dr. Claude Alvares, aged 74, Indian national, Secretary – Goa Foundation, applicant organization abovenamed, do hereby solemnly affirm and state as under:

1. That I am the secretary and authorized representative of Goa Foundation, i.e. the Applicant, and I am aware of the present case, and as such am competent to swear this affidavit.

2. That I have read and understood the accompanying Application which has been drafted on my instructions.

3. I verify that the contents of paras 1, 2, 3(p), 5(p), 6, 7(p), 8, 9, 10, 11(p), 12(p), 13(p), 14(p), 15(p), 17(p), 18(p), 20(p), 21(p), and 22 of the accompanying application are in the nature of facts which are true to my own knowledge and as per official documents/records, and that the contents of paras 3(p), 4, 7(p), 11(p), 12(p), 13(p), 14(p), 15(p), 16, 19, 20(p), 21(p), and 23 are my submissions based on legal advice which I believe to be true

and correct. No part of it is false and nothing material has been concealed there from.

4. That the Annexures enclosed are true and correct copies of their respective originals.

Solemnly affirmed at Mapusa, Goa,
this the 13th day of April, 2023

THE GOA FOUNDATION
Reg. No. 23/GOA/86

DEPONENT

Janardhan S. Parshekar
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025
NOTARY GOVT. OF GOA (INDIA)

[illegible] AFFIRMED [illegible]
[illegible] Dr. Claude Alvare
[illegible] IDENTIFIED BEFORE ME BY
[illegible]
[illegible]
[illegible] 1455/2023 [illegible] 13/04/2023

JANARDHAN S. PARSHEKAR
TARY AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA

VERIFICATION

I, Dr Claude Alvares, age 74 years, Indian national, with residence at H.No.441, Almeida Vaddo, Parra, Bardez, Goa 403510, Secretary of the Applicant above named, do hereby verify that the contents of paras 1 to 4 of my above affidavit are true to my knowledge and belief, and that no part of it is false and nothing material has been concealed therefrom.

Verified on this the 13th day of
April 2023 at Mapusa, Goa

THE GOA FOUNDATION
Reg. No. 23/GOA/86

DEPONENT

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NOTARY
Janardhan S. Parshekar
Mapusa Bardez - Goa
Regd. No. 218/10
Expiry Date
29/01/2025
GOVT. OF GOA (INDIA)

[illegible] AFFIRMED [illegible]
[illegible] Dr. Claude Alvares
[illegible] IDENTIFIED BEFORE ME BY
[illegible]
[illegible]
[illegible] 1455/2023 [illegible] 13/04/2023

JANARDHAN S. PARSHEKAR
TARY AT MAPUSA, BARDEZ - GOA
STATE OF GOA INDIA

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL (WESTERN ZONE BENCH), PUNE

O.A. NO. __________ /2023 [WZ]

The Goa Foundation …Applicant

vs.

The State of Goa and Ors. …Respondents

Compilation – II

INDEX

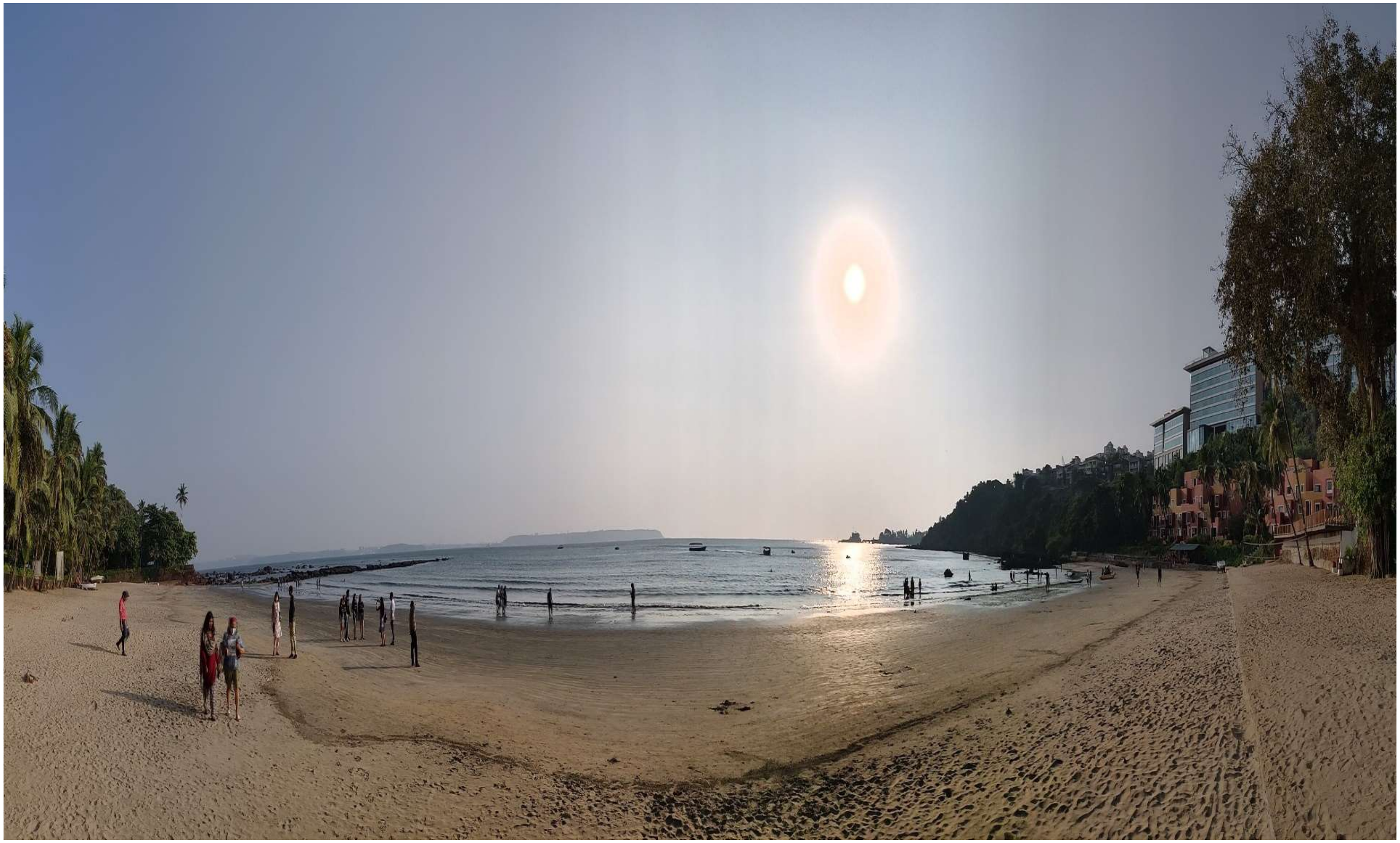
Sr. No.	Particulars	Page No.s
1.	**Annexure 1:** Photographs of the Vainguinim Beach and of the illegal Construction in the form of cement-concrete embankment.	**19 - 23**
2.	**Annexure 2 Colly:** Judgements of the Hon'ble High Court of Bombay at Goa in *Minguel Martins vs M/s Sociedade e Fomento industries Pvt Ltd [2000 (4) BOMCR 448]*, and of the Hon'ble Supreme Court of India in *Fomento Resorts and Hotels Ltd & Anr vs Minguel Martins & Ors [(2009) 3 SCC 571]*	**24 - 90**
3.	**Annexure 3:** Relevant extract of the Final Approved CZMP for Goa showing the Vainguinim Beach stretch	**91 - 93**

4.	**Annexure 4 Colly:** Applicants' letters to the G.C.Z.M.A. and Chief Secretary, dt. 21.04.2021 and 07.06.2021 respectively.	**94 - 97**
5.	**Annexure 5 Colly:** Photographs of the embankment/construction while it was underway, and media reports thereof.	**98 - 103**
6.	**Annexure 6 Colly**: Photographs of the embankment / construction on Vainguinim Beach, with new and additional structures put up adjoining it from time to time	**104 - 106**
7.	**Annexure 7**: Map prepared by the District Collector / Directorate of Survey and Land Records which shows the subject property of the Resp. No. 3 hotel / resort, dt. 28.06.2021	**107**
11	**Annexure 8:** Map prepared by Applicant showing location of the concrete embankment/ construction, in relation to property of Resp No. 3.	**108**
12	**Annexure 9:** Map prepared by the Directorate of Survey and Land Records which shows the subject property of the Resp. No. 3 hotel/resort, dt. 30.10.2009	**109**
13	**Annexure 10:** Judgment of the Hon'ble N.G.T. in Original Application No. 04 / 2013(SZ), *C.H. Balamohan vs. Union of India* , dt. 11.04.2022	**110 - 166**
14.	**Annexure 11:** Order of the Hon'ble High Court of Bombay at Goa in P.I.L. W.P. 29/2022, *Goa Foundation vs. State of Goa and Ors*, dt. 07.10.2022	**167 - 168**

Place: Mapusa, Goa
Date: 13.04.2023

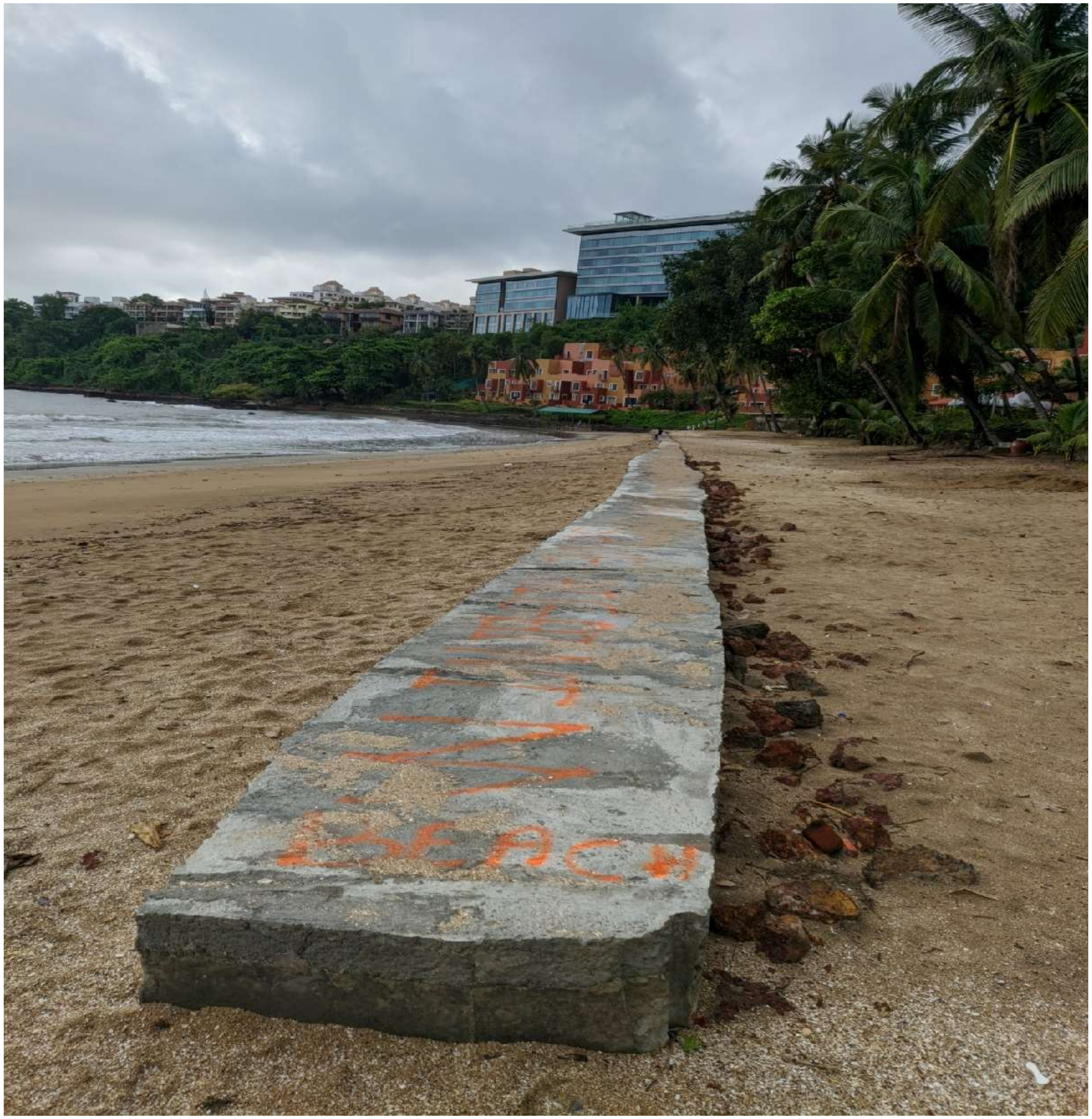
Advocate for the Applicant

ANNEXURE 1

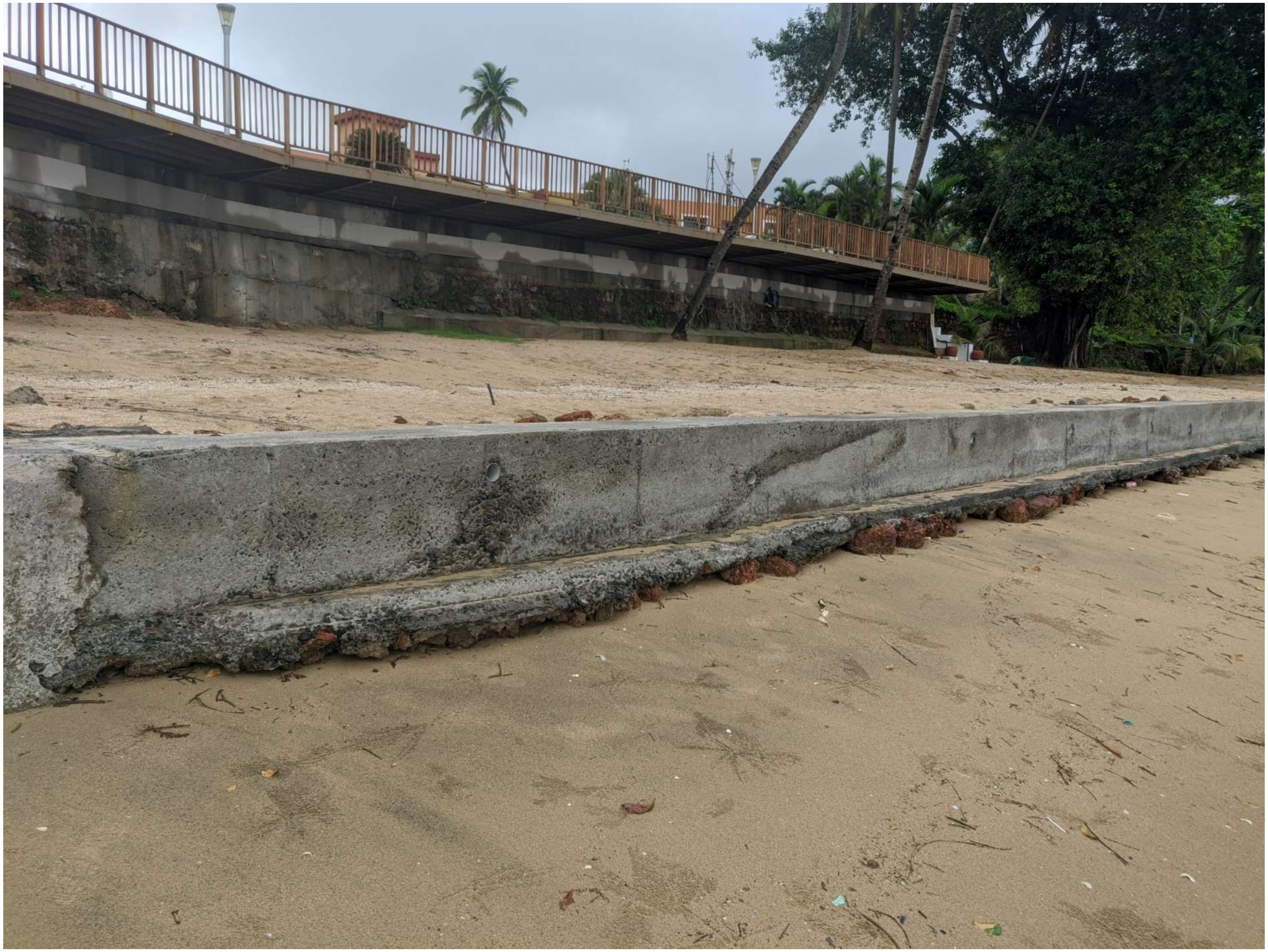


Illegal concrete embankment appears on
the right-hand side of the photograph

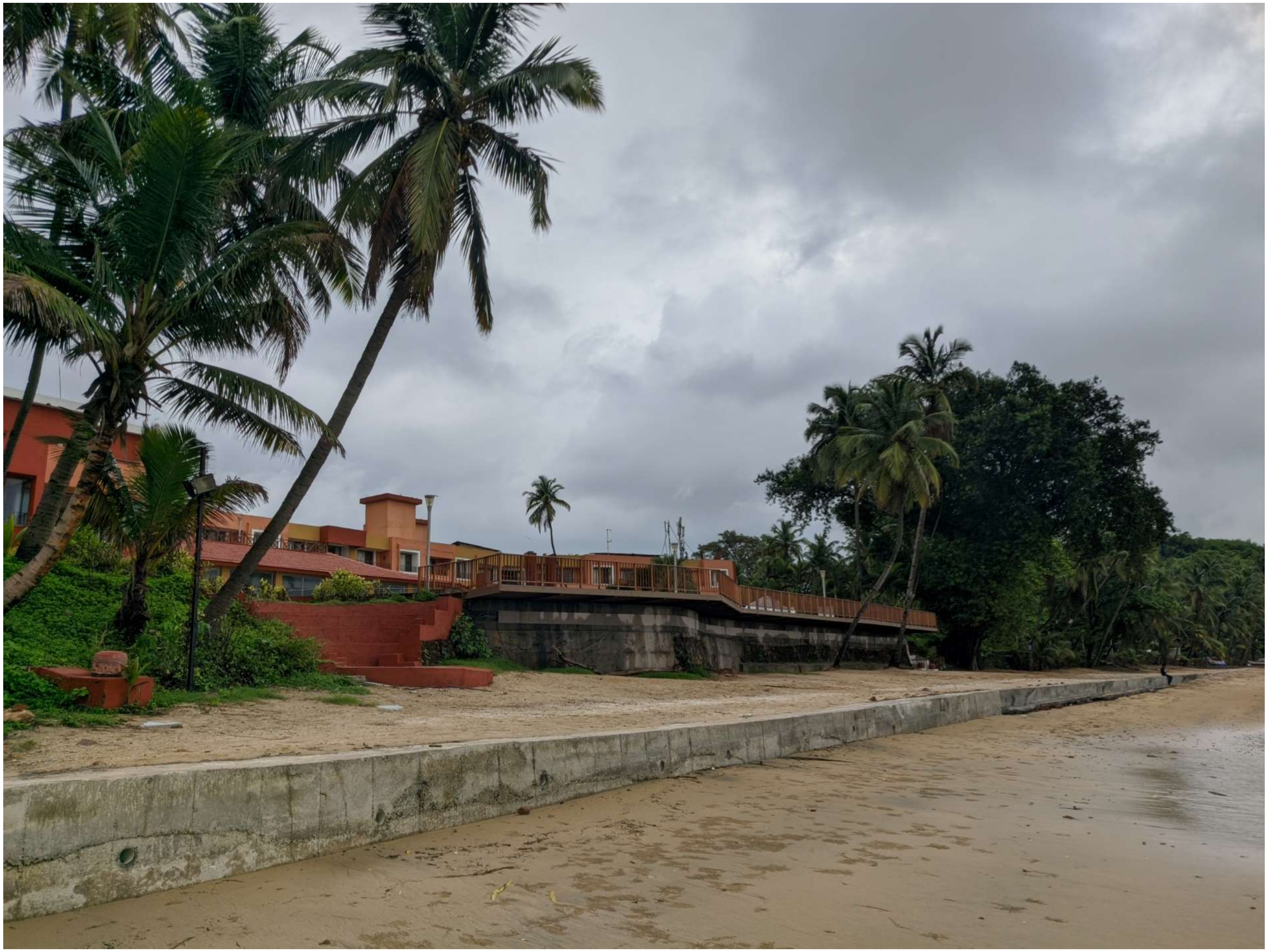
True Copy



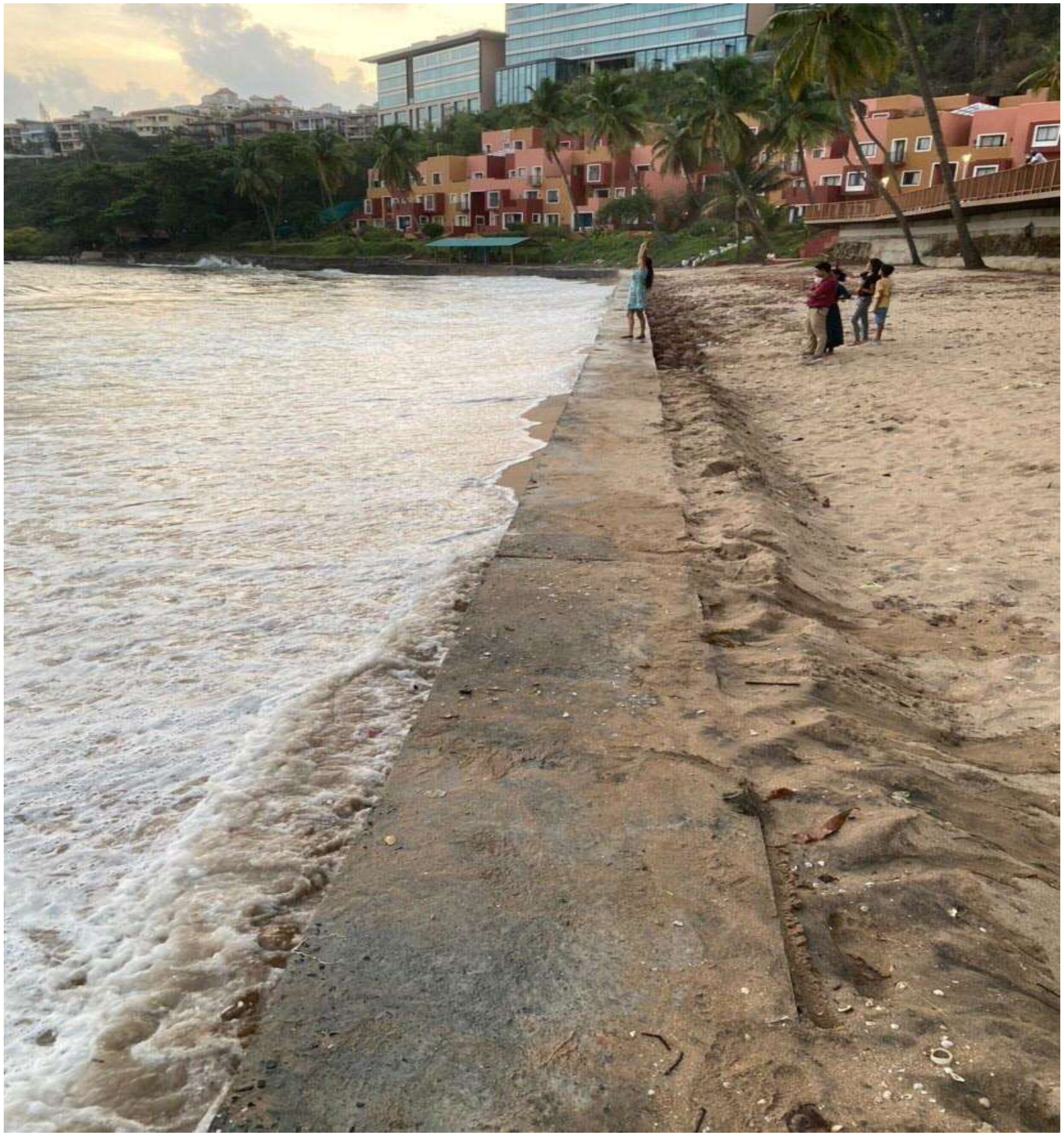
Illegal embankment exposed during the low tide



Another picture of the illegal embankment



Different angle of the illegal construction



Picture of the embankment during the high tide

ANNEXURE 2 COLLY

2000 SCC OnLine Bom 258 : (2000) 4 Bom CR 448

Affirmed with directions in *Fomento Resorts & Hotels Ltd.* v. *Minguel Martins*, (2009) 3 SCC 571

Affirmed in *Goa Foundation* v. *Fomento Resorts and Hotels Ltd.*, (2009) 3 SCC 739

Bombay High Court
(Panaji Bench)
(Before R.K. Batta and R.M.S. Khandeparkar, JJ.)

Shri Minguel Martins … Petitioner;
Versus
M/s. Sociedadee Fomento Industries Pvt. Ltd. & others … Respondents.

Writ Petition No. 330 of 1991, W.P. No. 36 of 1992 and W.P. No. 141 of 1992
Decided on April 25, 2000

The Judgment of the Court was delivered by

R.K. Batta, J.:— The issues involved in all these petitions are similar and as such the petitions are heard together and are being disposed off by common judgment.

2. The petitioner in Writ Petition No. 330/91 is a plot holder in Machados Cove surveyed under No. 792 (old) and the challenges in this petition are four fold. The first challenge relates to the agreement dated 26-10-1983 between the President of India and Fomento Hotels and Resorts Limited formerly called Gomantak Land Development Pvt. Ltd. (hereinafter called the hotel), the second challenge relates to the access through the land surveyed under No. 246/1 (old 787), which is also the subject matter in Writ Petition No. 284/91 and 37/92, and the third challenge is that the said Survey No. 787 and 803 (246/2 new) fall within C.R. 2. Regulation and as such no development can be carried out therein. In so far as the third challenge is concerned the learned Advocate for the petitioner has submitted that the petitioner does not press this challenge in this petition since this challenge in elaborate form is the subject matter of a separate petition filed by Goa Foundation which is pending. The fourth challenge in this petition is relating to sewage treatment plant but the same is also not pressed and no arguments have been advanced in that connection. The petitioner in Writ Petition No. 36/1992 is Goa Foundation and basically it has raised the same challenge which correspond to challenge No. 1 in Writ Petition No. 330/91. The second challenge in this petition relates to claim of public access through Survey No. 246/2 (803 old) to the Vainguinim beach.

3. In Writ Petition No. 141/92, the petitioner has also substantially raised the same challenges. This petitioner has in fact filed a Special Suit No. 313/1978 for preemption in relation to Survey No. 246/1 (old 787) which property is subject matter, of other two Writ Petitions No. 37/92 and 284/91. This petitioner has also challenged the acquisition of Survey No. 246/2 and 245/2 by filing a writ petition and ultimately he had compromised the matter with the said hotel.

4. The basic facts in all these petitions may be narrated first. Fomento Hotels and

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Resorts Limited addressed a letter dated 15-11-1978 to the Government of Goa seeking acquisition of Survey No. 246/2 (old 803) and Survey No. 245/2 (old 804) so as to provide facilities such as health centre, sports facilities and swimming pool to the hotel residents and the residents of this territory in the said acquired land. It was stated in the said letter that facilities provided by the hotel will be open for use on membership to non-residents also. The hotel had to approach the Government since efforts made by it to purchase the said properties from the owners thereof did not bear any fruits. On either sides of this plot, the land belonged to the hotel and in Survey No. 246/1 (old 787) hotel known as Cidade de Goa had already been constructed. The acquisition was sought for the expansion of the project so that land under Survey No. 245/1 (old 805) which was beyond the acquired land could be utilised for setting up Yoga Centre, Health Club and Water sports facilities for promoting tourism. The Government accepted the request of the hotel and acquired Survey No. 246/2 (old 803) and 245/2 (old 802) under Land Acquisition Act and agreement dated 26-10-83 was entered into between the President of India and Fomento Hotels and Resorts Limited. Under the said agreement, the acquired land was handed over to Fomento Hotels and Resorts Limited on 26-3-1985. The acquired land was handed over with certain conditions and the case of the petitioners is that these conditions have not been complied with and as such the acquired land is required to be resumed in the terms of the said agreement. In this connection, the petitioners case is that no construction is permissible under the said agreement in the acquired land and that at any rate the constructions which have been carried out in the acquired land have no nexus to the purpose for which it was handed over to the hotel and that no sport and recreational facilities/amenities have been provided to the public thereunder.

5. In this respect, the case of the hotel is that constructions are permissible under the said agreement; that sports and recreational facilities have already been provided and the details of the same have been given by it to which we shall refer to at a later stage and that there is no case made out for resumption.

6. In respect of the second challenge, the case of the petitioners is that the agreement dated 26-10-1983 recognises the existence of access; in fact the hotel in written statement filed in Special Civil Suit No. 313/78, which was filed by the petitioner in Writ Petition No. 141/92, had admitted the existence of an access coming from Machados Cove and passing through Survey No. 246/2 (old 803) and in this connection not only a plan showing the access had been filed by the hotel in the civil suit but an affidavit had been filed by one Avdhoot Kamat in support of the said stand of the hotel.

Page: 451

7. The case of the hotel in this respect is that though an access existed along the nullah yet an alternate access which is the subject matter of Writ Petition No. 37/92 and 284/91 had already been provided. The hotel had also tried to deny the existence of any access through the acquired land. It is also pointed out that access referred to by the hotel in written statement filed in Special Civil Suit No. 313/78 was in fact denied by the plaintiff in the said suit who is petitioner in Writ Petition No. 141/1992.

8. We shall now deal with the two challenges one by one in greater detail. Arguments were advanced before us and rulings were quoted on the question of public purpose and also as to under which clause of section 40 the acquisition would fall. Learned Advocate Shri Sonak took us through the definition of the expression “public purpose” as contained in section 3(1) of the Land Acquisition Act and urged before us that the public purpose for which the land in question was acquired would fall under

section 40(1)(b) since the land in question could not be acquired under section 40(1)(a) or (aa). In this connection it was pointed out that section 40(1)(b) does not speak of construction of any building and referring to various clauses of the agreement dated 26-10-83, it was urged that no construction whatsoever is permissible in the acquired land. Learned Advocate Shri Sonak relied upon paragraph 12 of the judgment in (*State of West Bengal* v. *P.N. Talukdar*)[1], reported in A.I.R. 1965 Supreme Court 646 which reads as under:

> "Generally speaking the appropriate Government would not state in so many words whether it was proceeding under Clause (a), or Clause (aa) or Clause (b). The question whether consent has been given under one clause or the other or more than one clause has to be decided on the basis of the agreement entered into under section 41 and the notification under section 6. It is open to the appropriate Government to give consent on being satisfied as to one of the three clauses only or as to more than one clause. The question as to which clause of section 40(1) was acted upon by the State Government to give consent is important because on that will depend the nature of the agreement which has to be made under section 41. There are bound to be differences in the terms to be embodied in an agreement under section 41 depending upon whether the consent was given. Therefore the Court has to scrutinise the agreement to find out under which clause of section 40 (1) the consent was given."

9. It lays down that the question whether the consent had been given under one clause or the other or more than one clause has to be decided on the basis of the agreement entered into under section 41 and the notification under section 6 of the Act.

10. Learned Advocate Ms. Norma Alvares argued on similar line and on the question of public purpose relied upon the judgment of the Apex Court in (*Srinivasa Co-operative House Building Society Ltd.* v. *Madam Gurumurthy*

Sastry and Others)[2], reported in (1994) 4 SCC 675 which lays down that the purpose should be connected with public utility and it should be beneficial, to the general public and not to private persons.

11. On public purpose, learned Senior Counsel Shri Usgaonkar appearing on behalf of the said hotel placed before us two judgments of the Apex Court in (*R.L. Arora* v. *The State of Uttar Pradesh*)[3], reported in A.I.R. 1962 Supreme Court 764 and (*State of West Bengal* v. *Surendra Nath Bhattacharya*)[4], reported in (1980) 3 SCC 237 : A.I.R. 1980 Supreme Court 1316. Referring to paragraph 13 of the judgment of the Apex Court in A.I.R. 1962 Supreme Court 764 it was pointed out that the land should be acquired through the coercive machinery of the Act only for the restricted purpose mentioned in sections 40 and 41 which would also be a public purpose within the ambit of section 4 of the said Act. Relying upon the judgment in *State of West Bengal* v. *Surendra Nath Bhattacharya* (supra) it was pointed out that acquisition of land for construction work for a company manufacturing sodium silicate and Plaster of Paris would be public purpose within the meaning of section 40(1)(aa) of the Act.

12. Looking into the purpose for which the land was acquired and the agreement under which the acquired land was handed over to the hotel, it is clear that land was acquired for tourism development project which work was likely to prove useful to the public for the purpose of sports and recreation facilities/amenities. In this agreement certain restrictions were put and besides other things which were contemplated, the

hotel was required to create sports and other recreational facilities/amenities within one year from the date of handing over. It is pertinent to note that the acquisition was pursuant to letter dated 15-11-78 of the hotel wherein it was contemplated that the facilities such as health centre, sports facilities and a swimming pool are very useful to the public in general and the facilities could be availed by the hotel residents and the residents of this territory/public at large. The land in question was handed over on 26-3-85. Looking into all these facts, it is obvious that the acquisition is under section 40 (1)(b) of the said Act.

13. This agreement dated 26-10-83 casts certain statutory obligations on the hotel and as such it would be necessary at this stage to look into the agreement in detail since the interpretation of the agreement *vis-a-vis* the question whether construction is permitted or not in the acquired land will depend upon the terms incorporated in this agreement. Clause 3 of the agreement provides that the acquired land when so transferred to and vested in the company shall be held by the company as its property to be used only in furtherance of and for the purpose for which it is required.

(Emphasis supplied).

14. Clause 4 provides that the company shall not use the acquired land for any purpose other than that for which it is acquired

(Emphasis supplied)

and it is necessary at this stage to reproduce Clause 4(ii) and (viii) which read as under:

> (ii) The company shall undertake the work of creation of sports and other recreational facilities/amenities within one year from the date on which the possession of the said land is handed to the company and complete the same within three years from the aforesaid date.

Page: 453

(This period can be extended under Clause (iii) by Government upto maximum of six years for reasons beyond control of the company.)

> (viii) The company shall never construct any buildings or structures in the acquired land. Prior approval of Eco-Development Council of the Government of Goa, Daman and Diu will be obtained before undertaking activities for the development, besides other statutory requirements under the existing laws.

15. Though Clause 4(viii) states that the company shall never construct any buildings or structures in the acquired land without prior approval of the Eco-Development Council, besides other statutory requirements under the existing laws, yet on reading of Clause 4 as a whole, we find it difficult to accept the contention of the petitioners that no construction whatsoever can come in the acquired land. Nevertheless, it must be pointed out that construction works which can be done on the acquired land must have relation and direction connection with the sports and recreational facilities/amenities which were required to be carried out by the hotel within a period of one year from the handing over of the possession. The Government has not filed any return nor it appears that it bothered to took into the matter after the execution of the said agreement, whether the purpose for which the land was acquired was being carried out and whether the terms of the said agreement including creation of sports and recreational facilities/amenities within the time limit or within the extended time period have been carried out in the land or not. Learned Government Advocate Shri Bharne could not throw any light on this aspect.

16. The question to be examined therefore, is whether constructions which have been made by the hotel have connection with the purpose for which the land was acquired and was handed over to the petitioners under the said agreement dated 26-10-83. The petitioners have stated that no such sports and recreational facilities/amenities have been provided for the public in the acquired land. On the other hand, the hotel has filed return stating that the sports and recreational facilities have been provided. It is the case of the hotel that acquired land surveyed under No. 246/2 (old 803) and 245(2) (old 804) has been converted in garden and other recreational activities such as tennis courts, putting green have been provided. It is also stated that children's park was also located in Survey No. 246/2 (old 803) and 245(2) (old 804) till 1991. However, on account of complaints from the guests the same was shifted and brought nearer to the old building and at present there are hammocks and chairs and dance floor besides tennis Court and putting green. It is nowhere disclosed by the hotel whether the said facilities/amenities are available to the general public or any scheme has been put into operation by the hotel in order to make such facilities/amenities available to the public at large/residents of this territory. No such scheme is placed before us. This means that these facilities will be restricted only to the occupants of the hotel alone. Not only that, no sports and recreational facilities have been made available to the public but on the contrary, the hotel has constructed many structures on the acquired land which have absolutely no connection with the sports or recreational facilities which were required to be provided to the public under the said agreement dated 26-10-83. The said construction include the extension to the hotel building which is now projecting in Survey No. 246/2 (old 803) and this projected structure is said to be used by

the hotel as telephone exchange. This extension admeasures 1000 sq. mtrs. These facts have been admitted by the hotel in the return. The other structures which are found in the acquired land are laundry building, boiler room, laundry extension, store-rooms, kitchen, food service platform, cluster of open air bars, sheds for the purpose of sitting. All these constructions *prima facie* are not connected to the sports or recreational facilities and obviously these constructions would not be permissible within the acquired land taking into account the purpose for which the land was acquired. For the extension of the building in the acquired land no permission had been taken initially though subsequently it seems to have been regularised. It is rather unfortunate that the Government has not taken proper safeguards while drafting the agreement and certain things were left vague and even subsequently there does not appear to be any follow up in order to ensure that the terms of the agreement had been complied with. At least nothing has been placed before us in this connection. All these buildings, structures and extension of building into Survey No. 246(2) (803 old) which have come up in the acquired land are, therefore, required to be demolished, since the buildings are not connected with the purpose for which the land was acquired in pursuance of letter dated 15-11-1978 and thereafter handed over to the hotel in terms of agreement dated 26-10-1983.

17. Coming to the second challenge namely the question of access claimed by the petitioners, the case of the petitioners is that the access to the beach existed prior to the said agreement and the existence of the access appears in the agreement itself under Clause 4(ix) of the said agreement which reads as under:

> (ix) The public access/road to the beach shall not be affected or obstructed in any manner.

18. This access/road which is referred to in Clause 4(ix) has reference to the acquired land which has been handed over to the hotel under the said agreement. In addition the petitioners have relied upon the written statement filed by the hotel in Civil Suit No. 313/78 wherein the access through the acquired land surveyed under No. 246(2) (old 803) is admitted by the hotel. In this written statement the stand of the hotel is as under:

> 2-G. That the beach existing at the south of property 803 and 787 is a public resort and it is visited by members of the public from all parts of Ilhas *Taluka*. For this purpose there is a ramp (stone construction) built on the ground in property 803 as a means of access to the beach. There is also a similar ramp in the property 787. The existence of the ramps and the date of their construction is lost in antiquity but has been known to exist at least from the last seventy years.
>
> 2-H. In order to have access to the portion of the beach existing in the property 803, there is a footpath starting from the ramp and going towards north upto the culvert linking property 803 with property 792 of Machado and therefrom after crossing the property of Machado in the same direction it touches the public footpath going from Dona Paula to Calapur. At present the said footpath touches the Panaji-Dona Pauia Bambolim road and crosses the property of Machado.
>
> 2-I. The way mentioned in the preceding para 2-H is being used by members of the public living in the village Calapur and also by other members of the public coming from different parts of *Taluka* Ilhas. This way is clearly visible on site.

2-S. The ways mentioned in para 2-G, 2-H and 2-P have been used by members of the public and villagers from immemorial times, openly, peacefully, continuously in order to come to the beach and they are public ways and have been so dedicated as is evidenced by the long and continuous user.” Petitioners crave leave to rely upon the said written statement as and when it is required.

19. In paragraph 2-G, it is admitted that the beach existing at the south of property under No. 246/2 (old 803) is a public resort and it is visited by members of the public from all parts of Ilhas *Taluka* and for that purpose there is a ramp built on the ground in property 803 (246/2 new) as a means of access to the beach. The ramp exist for at least for the last seventy years from the date of filing the written statement in the year 1978. In paragraph 2-H, it is stated that in order to have access to the beach, existing in the property 803, there is a footpath starting from the ramp and going towards north upto the culvert linking property 803 with property 792 of Machado and therefrom after crossing the property of Machado in the same direction it touches the public footpath going from Dona Paula to Calapur and at present the said footpath touches the Panaji-Dona Paula-Bambolim road and crosses the property of Machado. In paragraph 2-1, it is categorically admitted by the hotel that the way referred to in paragraph 2-H is being used by members of the public living in Calapur and also coming from different parts of Ilhas *taluka* and that this way is clearly visible at the site. Paragraph 2-S states that the ways have been used by the members of the public and villagers from immemorial times, openly, peacefully, continuously in order to come to the beach and they are public ways and have been so dedicated as is evidenced by the long and continuous user. In support of these averments an affidavit was filed by Avdhoot Kamat, Civil Engineer on behalf of the hotel alongwith a plan which was prepared on instructions from the said hotel and on the plan he has shown

the existing pathways by red pencil lines. In Writ Petition No. 141/92 these facts have been categorically stated, in paragraph 3 wherein it is stated that Sociedade e Fomento had filed written statement with affidavit of Avdhoot Kamat with plan showing traditional accesses. The petitioner in said Writ Petition No. 141/92 has placed the copy of the said affidavit alongwith the plan (the plan is traced from Xerox certified copy issued by the Civil Court showing the relevant pathways) which are collectively marked as Exh. A to the petition. The said affidavit of A. Kamat and the plan have been filed on record. This plan is to the scale and in this plan the access is shown at point A-B which starts from the ramp at point B and further goes beyond point A towards Machado Cove. The learned Senior Counsel appearing on behalf of the hotel has tried to urge that none of the petitions filed can be said to in public interest since the petitioners in Writ Petition No. 141/92 and 330/91 have an axe to grind against the hotel and that Goa Foundation has not filed any petition claiming further access which goes towards Machado Cove. In so far as Goa Foundation is concerned, we do not find any merit whatsoever in the submissions of the learned Counsel as Goa Foundation is espousing the cause of the public at large which was admittedly using the said access A to B. The hotel in written statement in Civil Suit No. 313/78 had categorically admitted the existence of the access A-B passing through the acquired land from the beach and proceeding further

towards Machado Cove. It is also pertinent to note that the contents of paragraph 3 in Writ Petition No. 141/92 have been admitted by the hotel in its return dated 30-3-1992 in paragraph 15 at page 91 of Writ Petition No. 141/92. The existence of the way through 803 is, therefore, established beyond any doubt whatsoever.

20. Learned Senior Counsel argued before us that in terms of section 16 of the Land Acquisition Act when the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances. Therefore, the contention of the learned Senior Counsel is that if any encumbrances including the way existed, the same stands wiped out in accordance with section 16 of the said Act. First of ail, we may say that the traditional public right of way cannot be said to be strictly encumbrance. Secondly, the existence of way which was in use from time immemorial by the public openly, peacefully and continuously would not be affected. Moreover, in the agreement itself, the access through Survey No. 246/2 (803) is acknowledged by clause 4(ix) of the agreement which states that the public access/road to the beach shall not be affected or obstructed in any manner. Therefore, the right of public access/road to the beach is categorically saved under the said agreement. The claim of the petitioner in relation to the access is therefore, well founded.

21. Even though it was repeatedly submitted by Senior Counsel for the hotel before us that the Vainguinim beach in question is a public beach, yet we find that the hotel has tried to create all sorts of obstructions relating to the access to the said beach in order to privatize the said beach. The hotel had advertised that it has a private beach. The explanation given by the hotel in this respect is totally unacceptable. Even though the existence of access was denied by the hotel through the acquired land yet it was admitted that access was available near the *nullah* which was also obstructed by constructing walls/barbed wire fence. In this respect it was also stated that alternate access was provided. This alternate access first was between Survey No. 246/1 and 246/2 for some period which is marked as yellow on plan and it was later on shifted to purple access which is the subject matter of other two petitions. Even attempt to block

the purple access by constructing gates was made by the hotel in respect of which P.P.D.A. issued notice dated 4-6-90 which is on record of Writ Petition No. 284/91 at page 223 which is also referred in affidavit of Member Secretary, C.P.D.A. in para 7 at page 187 in Writ Petition No. 330/91. In the letter dated 17-12-1991 at page 29 of Writ Petition No. 36/92 the Deputy Collector has written a letter to the B.D.O. forwarding the representation of Goa Foundation with directions to instruct the *Sarpanch* of Village *Panchayat* to take necessary action against the illegal construction and wall raised by Cidade de Goa.

22. At this stage we would like to refer to the judgment of the Apex Court in (*M.C. Mehta* v. *Kamal Nath*)[5], reported in (1997) 1 SCC 388 wherein the Apex Court has laid down in paragraph 34 and 35 that the State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. These resources meant for public use cannot be converted into private ownership.

It is further pointed out that in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

23. After executing the agreement dated 26-10-83, the Government totally abandoned its duty and did not care to see whether the terms of the agreement were complied with or not. In this connection we may also refer to the judgment of the Calcutta High Court in (*Pramatha Nath Talukdar* v. *State of West Bengal*)[6], reported in A.I.R. 1963 Calcutta 554 wherein the Calcutta High Court found that though the details of the terms and conditions on which the public would be entitled to use or enjoy the benefit of the constructions sought to be made on the acquired land should be specifically set out in the agreement the fact that the agreement is couched in general terms and does not contain any detailed scheme as to the extent of the actual user by the public leaving the determination of the conditions on which the public will be entitled to have the benefit of the establishment to the discretion of the company, does not make the agreement or the proceedings for acquisition bad. However, if the rules and regulations of the company which are subsequently framed after the establishments contemplated are set up, do to confer sufficient benefit on the public and are not directly useful to the public or if the rules framed are such as to make the benefit intended to be conferred on the public of an illusory nature, the Government will be entitled to take possession of the property acquired and to put an end to the interest of the company. We have already pointed out that no scheme prepared by the hotel had been produced before us from where it could be said that the benefits of the acquired land have been, extended to the public under the said agreement dated 26-10-83.

24. In so far as resumption of land is concerned, the agreement provides for a due notice. In the circumstances, we are *prima facie* of the view that a notice is required to be issued by the Government for resumption of the land in accordance with the proviso to Clause 6 of the agreement dated 26-10-83.

25. The challenge relating to yellow-access and shifting the same to purple access

which is raised in Writ Petition No. 330/91 has been exhaustively dealt with in separate judgment in connected Writ Petitions No. 284/91 and 37/92 and the order passed therein shall govern the said challenge and as such it is not necessary to deal with the same once again. For the aforesaid reasons, the writ petitions are allowed with the following order:

(1) The constructions which have come up in Survey No. 246/2 (old 803) are required to be demolished and the concerned authorities shall take action in this respect, within a period of eight weeks from today and file compliance report within two weeks therefrom.

(2) A notice for resumption of the land as required under proviso to Clause 6 of the agreement dated 26-10-83 shall be issued within ten weeks by

the Government to the hotel to show cause as to why, in the circumstances, the acquired land should not be resumed. The Government shall then take appropriate decision in accordance with law.

(3) The access which is shown in plan Exh. A colly which is at page 33 of Writ Petition No. 141 of 1992 shall be kept open without any obstruction of any kind from point A-B in order to come from Machado Cove side from point A to 803 (246/2 new) and then to go to the beach beyond point E. We have already pointed out that this plan is to the scale.

(4) The challenge relating to yellow access and shifting the same to purple access which is raised in Writ Petition No. 330/91 has been exhaustive and dealt with in separate judgment in connected Writ Petitions No. 284/91 and 37/92 and the order passed therein shall govern the said challenge.

26. Rule is made absolute in the aforesaid terms. Costs in these petitions shall be borne by the hotel Fomento Resorts and Hotels Limited.

27. At this stage, Learned Senior Counsel prays for stay. Stay is granted in relation to demolition of construction for eight weeks. Stay in so far as the access is concerned is refused.

28. Rule made absolute.

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(2009) 3 Supreme Court Cases 571

(BEFORE B.N. AGRAWAL AND G.S. SINGHVI, JJ.)

FOMENTO RESORTS AND HOTELS LIMITED
AND ANOTHER . . Appellants;

Versus

MINGUEL MARTINS AND OTHERS . . Respondents.

Civil Appeals No. 4154 of 2000† with Nos. 4155-56 and 6074 of 2000, decided on January 20, 2009

A. **Land Acquisition Act, 1894 — S. 40(1)(aa) and S. 40(1)(b) — Relative scope — Conditions for acquisition of land for a company under, compared — Held, use of the expression "in any industry or work which is for a public purpose" in S. 40(1)(aa) implies that a particular acquisition would fall under S. 40(1)(aa) if it is for construction of building or work for a company engaged or likely to engage itself in any industry or work which may not necessarily be useful to the public in general whereas usefulness of the construction of some work to the general public is sine qua non for acquisition under S. 40(1)(b)**

B. **Land Acquisition Act, 1894 — Ss. 4(1), 5-A, 6, 39, 40(1)(aa) & (b) and 41 — Land acquisition for company whether on facts under S. 40(1)(aa) or S. 40(1)(b) — Determination of — "Public purpose" — Scope — Where the Company was engaged in executing a tourism development project (in this case construction of hotel along with amenities like yoga centre, health club and water sports facilities), and some plots intervened between the plot on which the hotel building was to be constructed and the plot on which the said amenities and facilities were to be provided, held, acquisition of such intervening plots for the purpose of making the entire complex one composite unit was closely related to the Company's project — Hence, it had to be treated as effected under S. 40(1)(aa) and not under S. 40(1)(b) — Contents of the notification issued under S. 4(1) and the language of the agreement entered into between the appropriate Government and the Company under S. 41 taken into consideration to reach the conclusion — Further held, acquisition of land for tourism development project in Goa undertaken by the Company was certainly for a public purpose — Words and Phrases — "Public purpose"**

One *A* sold Plots Nos. 803 and 804 to *G* and Plots Nos. 787 and 805 to *S* (Appellant 2 herein). After purchasing the land, *S* leased out the same to the Company, Appellant 1 herein (the Company). The Company sought from the Gram Panchayat permission to construct a hotel complex near *V* Beach. As advised by the Chief Town Planner, Government of Goa in his letter dated 1-8-1978, the Gram Panchayat granted such permission stipulating that since the road leading to the hotel complex was being used by the general public to approach *V* Beach (the beach) which was a popular picnic spot for the people of the State, the Company must ensure that the right of access to the beach was maintained by providing a necessary footpath to the beach at an appropriate place. It was further stipulated that the parking facilities provided should also take care of the parking of vehicles of such members of the public. The construction commenced in 1978 and was completed in May 1983.

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† From the Judgment and Order dated 25-4-2000 of the High Court of Bombay, Panaji Bench at Goa in WP No. 330 of 1991

a In the meanwhile, *G*, had filed Suit No. 313 of 1978/A against *S*, *A* and certain others for a decree of possession by pre-emption in respect of Plots Nos. 787 and 805 and for certain other reliefs. The suit ended in compromise under which the plaintiffs gave up the said claim and the defendant agreed, inter alia, to exchange certain of its plots with Plots Nos. 788 and 789 belonging to the plaintiffs.

b Soon thereafter, the Company made an application dated 15-11-1978 to the Minister of Revenue, Government of Goa for acquisition of Plots Nos. 788, 789, 803, 804, 806 and 807 for construction of a Beach Resort Hotel Complex. The application stated that in the first phase the project hotel building would be constructed in Plot No. 787 and in the second phase, yoga centre, health club and water sports facilities would be set up in Plot No. 805 for promoting tourism. It added that Plots Nos. 788 and 789 which abutted the beach were, for the reasons stated, most suited for including in the layout plan of the hotel. The application c emphasised the need for acquisition of the said two plots and delivery of possession thereof to the applicant at the initial stage itself so as to avoid any delay in implementing the first phase of the hotel project. It further stated that for second phase of the hotel complex, it would be desirable to acquire Plots Nos. 803 and 804 which intervened between Plots Nos. 787 and 805 and their acquisition would make the entire area one composite unit. It added that the facilities to be provided would be available to hotel residents and, on d membership, also to non-residents. Acting on the said application, the Government of Goa issued Notification dated 29-10-1980 under Section 4(1) of the Land Acquisition Act, 1894 (the 1894 Act) for acquisition of Plots Nos. 803 and 804. After holding enquiry under Section 5-A of the 1894 Act, the State Government issued declaration under Section 6. *G* challenged the said notification in a writ petition which was ultimately withdrawn. e

In the meanwhile, on 26-10-1983 the Company entered into an agreement as required by Section 41 of the 1894 Act. The agreement stated that being satisfied after an enquiry under Section 40 of the Act that the proposed Tourism Development Project viz. construction of the hotel at the proposed place was likely to prove useful to the public, the Government of Goa had consented to acquire the land in question on behalf of the Company. Para 4 of the agreement f contained a number of stipulations. Clauses (*viii*) and (*ix*) thereof ran as follows:

> "(*viii*) The Company shall never construct any building or structures in the acquired land. Prior approval of Eco-Development Council of the Government of Goa, Daman and Diu will be obtained before undertaking activities for its development….
>
> (*ix*) The public access/road to the beach shall not be affected or obstructed in any manner…." g

Clause 6 of the agreement stipulated that in case the land was not used for the purpose of acquisition or was used for any other purpose or the Company committed breach of any of the conditions of the agreement, the said land would be liable to resumption by the Government in the manner stated therein.

After delivery of possession of the acquired land, the Company made an application to Panjim Planning and Development Authority (the Development h Authority) under Section 44(1) read with Section 49(1) of the Goa, Daman and

Diu Town and Country Planning Act, 1974 (the Town and Country Planning Act) for grant of permission for extension of the existing hotel building on Plots Nos. 787, 788 and 789. After consideration of the application by EEC and EDC, the a Development Authority issued an order dated 15-4-1988 under Section 44(3)(*c*) read with Section 49(2) of the Town and Country Planning Act granting permission to the Company for extension of the hotel building subject to certain conditions. Condition 10 thereof stipulated that the pedestrian path had to be made available by constructing an access from the jetty so that the public could reach the beach even during high tide.

b Subsequently, the Company made another application under Section 46 read with Section 44 of the Town and Country Planning Act for renewal of the permission granted by order dated 15-4-1988 with a deviation in respect of Plots Nos. 787, 803, 788 and 789. The Development Authority by its order dated 20-4-1992 granted such permission with the stipulation that Condition 10 of the order dated 15-4-1988 should be strictly adhered to. However, the Company had by then already started construction by deviating from the approved plan.

c Thereafter, one *M*, who claimed to have purchased part of Plot No. 792, popularly known as "Machado's Cove", filed a writ petition for issue of a direction to the State Government and other official respondents to remove the illegal construction made by the Company and also to revoke the permission granted by the order dated 15-4-1988. *M* also sought a direction to Respondents 1 and 2 in the writ petition (the appellants herein) to keep the traditional access d to the beach open and not to put up any further construction on Plots Nos. 787 and 803, which would interfere with the public road, parking lot and public access to the beach.

The appellants herein (the respondents before the High Court) opposed the writ petition, inter alia, on the grounds that: even if there existed access to the beach through the acquired land, the same stood extinguished after vesting of the e land in the Government, possession of which was given to Appellant 1 on 26-3-1985 and that the so-called admissions made in the written statement in Suit No. 313 of 1978 were not binding on them.

Goa Foundation, a registered society engaged in the protection of ecology and environment in the State of Goa, filed a writ petition seeking similar reliefs. It also sought to invoke Article 51-A(*g*) of the Constitution and contended that *V* f Beach, which was a public asset, was sought to be privatised by the respondents (the appellants herein).

G also filed a writ petition alleging therein, inter alia, that the land was acquired under Section 40(1)(*b*) of the 1894 Act and, therefore, the respondents in the writ petition were duty-bound to provide amenities to the public in terms of agreement dated 26-10-1983, which they had failed to do.

g The appellants herein opposed both the said writ petitions. They denied that they were trying to privatise *V* Beach.

The Development Authority filed a separate reply-affidavit deposing that it had neither granted approval to the deviation nor had it renewed the development permission of Appellant 1.

The High Court held that the land was acquired under Section 40(1)(*b*); that the extension of the hotel building on Plot No. 803 and other constructions were h illegal. The High Court negatived the argument of the appellants that in view of Section 16 of the 1894 Act encumbrance, if any, stood wiped out particularly when in the agreement itself access through Plot No. 803 was acknowledged in the form of Clause 4(*ix*). Allowing the writ petitions, the High Court directed that: (*a*) the constructions in Plot No. 803 should be demolished, (*b*) a show-cause notice for resumption of the land should be issued by the Government and appropriate decision should be taken pursuant thereto, and (*c*) access should be kept open without any obstruction from Points A-B in order to come from Machado's Cove side from Point A to Plot No. 803 and then to go to the beach beyond Point B. The appellants herein then filed the present appeals by special leave. a

Before the Supreme Court, the appellants contended that: (*i*) land in Plots Nos. 803 and 804 was acquired under Section 40(1)(*aa*) and not under Section 40(1)(*b*) of the 1894 Act, (*ii*) the expression "public purpose" in Section 40(1)(*aa*) was relatable to the purpose of company and not as the term is generally understood in the context of the provisions contained in Part II of the 1894 Act, (*iii*) in the absence of a specific stipulation to that effect in the notification published under Section 4(1) of the 1894 Act and agreement dated 26-10-1983, the High Court was not justified in issuing a mandamus for providing access to the beach through that, (*iv*) in place of the old path, a new path had made available for access to the beach by constructing road, car parking, etc. in compliance with the condition imposed by the Chief Town Planner in his letter dated 1-8-1978 and by the Gram Panchayat while granting permission for construction of hotel in Plot No. 787, (*v*) the irregularity, if any, in extending the hotel building to Plot No. 803, stood regularised by the Development Authority's order dated 20-4-1992, (*vi*) that the order of resumption could have been passed in terms of the agreement only by the Government and not by the High Court, and (*vii*) the so-called admissions made in the written statement filed in Special Civil Suit No. 313 of 1978/A could not be read against the appellants because the written statement was not signed by the authorised representative of Appellant 2 on personal knowledge. b c d e

Supporting the appellants, the State of Goa submitted that right of the public to use the traditional passage through private land bearing No. 803 could, at the best, be treated as an easementary right which stood extinguished with the acquisition of land under Section 4(1) of the 1894 Act, and vesting thereof in the State Government in terms of Section 16.

Goa Foundation contended that the Notification dated 29-10-1980 and agreement dated 26-10-1983 showed that the land was acquired under Section 40(1)(*b*) for execution of work for the benefit of the public viz. development of sports and recreational facilities/amenities which could be used by the occupants of the hotel rooms as also the general public. That on the date of acquisition, Appellant 1 had already constructed the hotel and in the garb of creating facilities and amenities for the occupants of the hotel rooms, it could not have extended hotel building on Plot No. 803, and that too in violation of the express bar contained in Clause 4(*viii*) of the agreement dated 26-10-1983. Invoking the doctrine of public trust, it contended that in view of Clause 4(*ix*) of the agreement right of the members of public to go to the beach through Plot No. 803 could not be obstructed. That prevention of the public at large from going to the beach through the traditional path would amount to privatisation of the public beach which was impermissible. f g h

On the pleadings of the parties, the Supreme Court framed the following questions:

a (*i*) Whether Plots Nos. 803 and 804 were acquired under Section 40(1)(*aa*) or was it an acquisition under Section 40(1)(*b*)?

(*ii*) Whether any public access was available to the beach through Plot No. 803 before its acquisition by the State Government and whether in terms of Clause 4(*ix*) of the agreement, Appellant 1 was required to maintain the said access/road to the beach, without any obstruction?

(*iii*) Whether public access to the beach through Plot No. 803 stood b extinguished with the vesting of land in the State Government under Section 16 of the 1894 Act?

(*iv*) Whether construction of the hotel building on a portion of Plot No. 803 was contrary to the purpose of acquisition and violative of the prohibition contained in Clause 4(*viii*) of the agreement dated 26-10-1983 and the High Court rightly directed demolition thereof in accordance with c Clause 6 of the agreement?

(*v*) Whether denial of the facilities and amenities created by Appellant 1 in Plot No. 803 to the members of public was contrary to the purpose of acquisition and violative of the agreement and the same could be made a ground for resumption of the acquisition of land?

Dismissing the appeals, the Supreme Court

d *Held* :

In the second part of Section 40(1)(*aa*), the legislature has used the expression "in any industry or work which is for a public purpose". This means that the particular acquisition can be treated to have been made under that section if it is for construction of some building or work for a company which is engaged or is likely to engage itself in any industry or work which may not necessarily be useful to the public in general. As against this, usefulness of the construction of e some work to the general public is sine qua non for acquisition under Section 40(1)(*b*). (Para 26)

The notification issued by the State Government under Section 4(1) shows that the land was needed for a public purpose, namely, the tourism development project—construction of hotel. As Appellant 1 was engaged in executing a project of tourism development i.e. construction of hotel along with amenities f like yoga centre, health club and water sports facilities, acquisition of Plots Nos. 803 and 804 was clearly relatable to its project. That is also borne out from the language of the agreement dated 26-10-1983. (Para 34)

R.L. Arora (2) v. *State of U.P.*, AIR 1964 SC 1230 : (1964) 6 SCR 784; *State of W.B.* v. *Surendra Nath Bhattacharya*, (1980) 3 SCC 237; *Pratibha Nema* v. *State of M.P.*, (2003) 10 SCC 626; *State of W.B.* v. *P.N. Talukdar*, AIR 1965 SC 646, *followed*

g *R.L. Arora (1)* v. *State of U.P.*, AIR 1962 SC 764 : 1962 Supp (2) SCR 149; *Somawanti* v. *State of Punjab*, AIR 1963 SC 151; *Jage Ram* v. *State of Haryana*, (1971) 1 SCC 671; *Bajirao T. Kote* v. *State of Maharashtra*, (1995) 2 SCC 442, *referred to*

Clause 4(*ii*) of the agreement dated 26-10-1983 shows that Appellant 1 was required to undertake the work of creation of sports and recreational facilities/amenities within one year of getting possession and complete the same within three years. That work was certainly ancillary to the tourism development h project being executed by Appellant 1. Therefore, the conclusion is that the acquisition was under Section 40(1)(*aa*) of the 1894 Act and the contrary finding recorded by the High Court is legally unsustainable. Tourism is an important industrial activity in Goa which attracts tourists from all over the country and abroad. A huge amount of foreign exchange is generated by that industry apart a from providing employment and ancillary benefits to a large section of the population of the State. Therefore, acquisition of land for tourism development project was certainly for a public purpose. (Para 35)

C. **Land Acquisition Act, 1894 — Ss. 4(1), 6 and 40(1)(aa) — Pre-acquisition position — Evidence regarding — Whether prior to acquisition of the plot in question for the Company, any public access to the beach was available through that plot — Admission made in an earlier suit by the** b **representative of the Company in that regard in written statement — Evidentiary value — Such admission although verified on the basis of information which the deponent believed to be true and not on personal knowledge, when in a subsequent proceeding (writ petition in this case) not pleaded to have been made under a bona fide mistake, held, rightly relied upon by the Court — Civil Procedure Code, 1908 — Or. 6 R. 15(2) and** c **Or. 12 R. 1 — Evidence Act, 1872 — S. 58 (Paras 43, 45 and 49)**

Nagubai Ammal v. *B. Shama Rao*, AIR 1956 SC 593 : 1956 SCR 451; *Collector of Bombay* v. *Nusserwanji Rattanji Mistri*, AIR 1955 SC 298; *Anurag Misra* v. *Ravindra Singh*, AIR 1994 All 174, *distinguished*

Slatterie v. *Pooley*, (1840) 6 M&W 664 : 151 ER 579; *Rani Chandra Kunwar* v. *Chaudhri Narpat Singh*, (1906-07) 34 IA 27, *referred to*

D. **Land Acquisition Act, 1894 — Ss. 42, 39, 41, 41(4-A)/(5) and 40(1)(aa)** d **— Stipulations in agreement executed under S. 41 pursuant to acquisition of land under S. 40(1)(aa) — Effect of, and duty of the Company to act in accordance therewith — Such stipulations, held, have by virtue of S. 42 the force of law — Hence, where such agreement required the Company to maintain the existing public access to the beach which was at that time available through the plot acquired, held, the Company was duty-bound to** e **maintain such access without obstruction of any kind whatsoever — Alternative access provided by the Company in terms of permission granted to construct a hotel on a plot not concerned with the said acquisition, held, could not relieve the Company of its obligation under the agreement executed under S. 41 to maintain the then existing public access to the beach — Moreover, public trust doctrine enjoins the State against transferring natural resources like forests, water bodies, rivers, seashores, etc. to a** f **private party if such transfer interferes with the right of public therein and courts can invoke the said doctrine to take affirmative action for protecting such right of the public as well as the public trust properties — Essence of public trust doctrine restated and case law on its application discussed — Indian society's traditional consciousness of the necessity to protect environment and ecology noticed — Further held, it has been the practice of** g **the courts to invoke Arts. 48-A and 51-A of the Constitution for protecting environment and ecology by issuing necessary orders to the State — Further held, High Court committed no error by issuing a mandamus in that regard — Constitution of India — Arts. 48-A, 51-A and 21 — Environment Protection and Pollution Control — Coastal areas — Liability to maintain existing public access to the beach through the land acquired under Land Acquisition Act** h

Held :

Once it is held that there existed public access to the beach through Plot
a No. 803 before its acquisition by the State Government in 1980, the appellants were duty-bound to act in accordance with Clause 4(*ix*) of the agreement, which has the force of law by virtue of Section 42 of the 1894 Act. That clause casts a duty on Appellant 1 to maintain access to the beach without obstruction of any kind whatsoever. The argument of the appellants and the State of Goa that the Court may relieve the appellants of the obligation to maintain access to the beach through Plot No. 803 because an alternative access had been provided by
b constructing road, parking area and public footpath, in furtherance of the permission accorded by the Gram Panchayat for construction of hotel in Plot No. 787, cannot be accepted for the simple reason that the agreement was executed between the President of India and Appellant 1 in the backdrop of acquisition of Plots Nos. 803 and 804, and Plot No. 787 on which the hotel was constructed had nothing to do with the acquisition proceedings. Therefore, the
c alternative road, parking and public footpath provided by Appellant 1 in lieu of the access available through Plot No. 787 cannot be made the basis for depriving members of the public of their age-old right to go to the beach through Plot No. 803. (Para 51)

The matter deserves to be considered from another angle. The public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it
d would be wholly unjustified to make them a subject of private ownership. These resources are gift of nature, therefore, they should be freely available to everyone irrespective of one's status in life. It enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if
e such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof. (Paras 52, 53 and 65)

The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in which the public has a
f special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. (Para 54)

Michigan Law Review, Vol. 68, No. 3 (January 1970), 471-566; Joseph L. Sax: "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", *referred to*

g The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder
h has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term interest in that property or resource, including down slope lands, waters and resources. (Para 55)

Illinois Central Railroad Co. v. *People of the State of Illinois*, 36 L Ed 1018 : 146 US 387 (1892); *Robbins* v. *Deptt. of Public Works*, 244 NE 2d 577; *National Audubon Society* v. *Superior Court of Alpine County*, 33 Cal 3d 419 (1983), *relied on*

a Johnson, 14 UC Davis L Rev 233, 256-57; *Some Reflections on Environmental Considerations in Water Rights Administration*, (1972) 2 Ecology LQ 695, 710-11; *National Audubon Society* v. *Deptt. of Water and Power*, (1982) 33 Hastings LJ 653, 654; *United Plainsmen* v. *N.D. State Water Cons. Commission*, 247 NW 2d 457 (ND 1976), *referred to*

Institutes of Justinian 2.1.1, *referred to*

b Natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems. (Para 65) c

The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main motto of social life has been "to live in harmony with nature". Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. (Para 59) d

The Constitution of India, which was enforced on 26-1-1950 did not contain any provision obligating the State to protect environment and ecology. But, after almost three decades of independence, the legislature recognised the importance of protecting and improving environment and safeguarding forests and wildlife and Articles 48-A and 51-A were introduced in Parts IV and IV-A of the Constitution respectively. Thereafter, the courts repeatedly invoked Articles 48-A e and 51-A for protecting environment and ecology and several orders were passed in public interest litigation mandating the State to take action for protecting forests, rivers and for anti-pollution measures. (Para 60)

The importance of the public trust doctrine was also recognised by the Supreme Court and the same was applied for protecting natural resources which have been treated as public properties and are held by the Government as trustee of the people. (Para 61) f

M.C. Mehta v. *Kamal Nath*, (1997) 1 SCC 388; *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*, (1999) 6 SCC 464; *Intellectuals Forum* v. *State of A.P.*, (2006) 3 SCC 549, *relied on*

National Audubon Society v. *Deptt. of Water and Power*, (1982) 33 Hastings LJ 653, 654; *National Audubon Society* v. *Superior Court of Alpine County*, 33 Cal 3d 419 (1983), *referred to*

g *Michigan Law Review*, Vol. 68, No. 3 (January 1970) 471-566; Joseph L. Sax: "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention", *referred to*

Therefore, it is held that Clause 4(*ix*) of the agreement was binding on the appellants and Appellant 1 was under a statutory obligation to maintain access/road to the beach through Plot No. 803 without any obstruction of any kind and the High Court did not commit any error by issuing a mandamus in that regard. (Para 66) h

E. **Land Acquisition Act, 1894 — Ss. 16, 4(1), 6, 39, 40(1)(aa) and 41(4-A) & (5) — Vesting of land in Government under S. 16, free from encumbrance — Extent of such freedom — Held, it does not extend to freedom from a condition imposed by the agreement executed under S. 41 on the Company for whom the land was acquired — Hence, where such agreement required the Company to maintain public access to the beach without any obstruction through the acquired land which access was available till then since time immemorial, held, provisions of S. 16 did not have the effect of extinguishing such right of the public — Moreover, High Court was right in holding that such right of the public was not an encumbrance — Words and Phrases — "Encumbrance" — Property Law — Encumbrances**

Held :

Admittedly, the agreement was executed by Appellant 1 under Section 41 of the 1894 Act in the backdrop of acquisition of Plot No. 803 and Plot No. 804. In terms of Clause 4(*ix*), Appellant 1 was required to maintain access to the beach without any obstruction. This shows that despite Section 16 of the 1894 Act, the parties had consciously decided to protect the traditional right of the members of public to go to the beach by using the existing pathway through the acquired land. Both, the appellants and the State functionaries knew that there existed public access to the beach through Plot No. 803, that members of public were using the same since time immemorial and that it was necessary to protect that right. Therefore, the High Court rightly held that access to the beach was not an encumbrance and in any case, the traditional pathway available to the public for going to the beach through Plot No. 803 could not be treated as having been extinguished in the face of specific provision contained in the agreement which was statutory in character. (Para 69)

In the present case, when the State volunteered to take possession of the land subject to the right of the members of public to access the beach through the acquired land and a specific provision to that effect was incorporated in the agreement executed under Section 41(5), Section 16 of the 1894 Act could not be invoked for nullifying the right of the public to access the beach through Plot No. 803. (Para 74)

Collector of Bombay v. *Nusserwanji Rattanji Mistri*, AIR 1955 SC 298; *H.P. SEB* v. *Shiv K. Sharma*, (2005) 2 SCC 164, *followed*

State of H.P. v. *Tarsem Singh*, (2001) 8 SCC 104, *considered*

F. **Land Acquisition Act, 1894 — Ss. 41, 42, 4(1) and 6 — Conditions imposed by agreement executed under S. 41 — Power to relax, if vests in any authority — Agreement stipulating use of acquired land by the hotelier Company exclusively for furtherance of and for the purpose of its acquisition i.e. creation of sports and other recreational facilities — It further stipulating for resumption of the land by the Government in case of violation of the said stipulation — Extension of the hotel building constructed on an adjacent plot to the land so acquired, although effected with the permission of Planning and Development Authority pursuant to approval by the Board constituted under S. 4 of Goa Town and Country Planning Act, held, illegal — Neither State Government, the Board nor Planning and Development Authority could allow such construction in violation the said agreement which had, by virtue of S. 42, force of law — Hence, High Court rightly directed its demolition in accordance with the**

procedure prescribed in the resumption clause of the agreement — Town Planning — Goa, Daman and Diu Town and Country Planning Act, 1974 (21 of 1975) — Ss. 4, 8, 17 to 20, 22 and 44 — Powers of Board, Planning and Development Authority and State Government — Scope — Held, they do not extend to permitting construction work in violation of the conditions of agreement executed under S. 41 of the 1894 Act on the land acquired

Held :

From the application addressed to the Minister of Revenue, Government of Goa for acquisition of land, it is evident that at that time Appellant 1 did not have any proposal for construction and/or extension of hotel building in Plot No. 803. The State Government initiated acquisition proceedings by issuing Notification dated 29-10-1980 under Section 4(1) of the 1894 Act, which were finalised in 1983. After the Government took possession of the acquired land, Appellant 1 entered into an agreement as per the requirement of Section 41. A conjoint reading of various clauses of the agreement unmistakably shows that Appellant 1 was to use the acquired land only in furtherance of and for the purpose for which it was acquired, namely, creation of sports and other recreational facilities/amenities and to maintain the same in good order and condition and was not to use the land for any other purpose. Neither in the minutes of EEC or EDC nor in the order issued by the Development Authority under Section 44(3)(*c*) read with Section 49(2) of the Town and Country Planning Act, was there any mention of Plot No. 803. That shows that till that stage, Appellant 1 had consciously refrained from putting up even a proposal for constructing any building or structure on the acquired land. For the first time a request to that effect was made in the garb of making an application for renewal of permission granted by order dated 15-4-1988 with a deviation. A mention of including Plot No. 803 was made. With a view to avoid scrutiny by EEC and EDC, the appellants managed consideration of the application for extension and deviation of hotel building by the Board constituted under Section 4 of the Town and Country Planning Act. The Board considered and approved extension/deviation albeit in violation of the negative covenant contained in first part of Clause 4(*viii*) of the statutory agreement. Unfortunately, the Development Authority without even bringing the matter to the notice of EDC, passed order dated 20-4-1992 and permitted Appellant 1 to carry out construction on plot bearing No. 803. (Paras 77, 78, 80 and 81)

It is held that neither the State Government nor the Board could allow extension of the hotel building on the acquired land in violation of the first part of Clause 4(*viii*) of the agreement dated 26-10-1983 which had the force of law by virtue of Section 42 of the 1894 Act. (Para 82)

None of the provisions in Sections 17 to 20, 22 and 44 the Town and Country Planning Act empowers the Board and/or the Development Authority to modify, amend, alter or change an agreement entered into as per the requirement of Section 41 of the 1894 Act or allow violation thereof by the Company. Therefore, the decision taken by the Board in its meeting held on 20-6-1991 and order dated 20-4-1992 issued by the Development Authority were non est and the High Court rightly did not give any credence to those decisions while adjudicating the issue relating to legality of the construction made on Plot No. 803. (Para 87)

Moreover, even EDC which was empowered under the second part of Clause 4(*viii*) of the agreement to grant approval to the activities relating to development could not have permitted construction/extension of the hotel building on a portion of Plot No. 803. Any such decision by EDC would also have been declared a nullity on the ground of violation of the mandate of the first part of Clause 4(*viii*) of the statutory agreement. (Para 88)

Therefore, it is held that the High Court did not commit any error by declaring that extension of the hotel building on 1000 sq m of Plot No. 803 was illegal and directing its demolition after following the procedure prescribed under Clause 6 of the agreement dated 26-10-1983. (Para 90)

G. **Land Acquisition Act, 1894 — Ss. 41, 4(1), 6 and 40(1)(aa) — Resumption clause in agreement executed under S. 41 — If on facts attracted — Agreement providing for resumption of the acquired land by Government in case of breach of any conditions stipulated therein — Land acquired for hotelier Company for the purpose of providing facilities for yoga centre, health club and amenities like water sports to hotel residents and on membership, also to non-residents — No stipulation in the agreement under S. 41 for availability of such amenities to public for use without permission and payment of fee — In such circumstances demand for making the said facilities and amenities available to the general public free of cost, held, not sustainable — Hence, denial thereof to the members of public, held, could not be made a ground for resumption of the acquisition land (Para 91)**

Fomento Resorts and Hotels Ltd. v. *Gustavo Renato Da Cruz Pinto*, (1985) 2 SCC 152, *referred to*

H-D/40159/C

Advocates who appeared in this case :

Anil B. Divan, Ms Indira Jaising and Pallav Shishodia, Senior Advocates [Dhruv Mehta, Ms Amira A. Razaq, Ms Meghalee Barthakur, Ms Kanika Gomber, Ms Mallika Joshi, Rajan Narain, Norma Alvares, Sanjay Parikh, Ms Anitha Shenoy, Jatin Sahai, A.N. Singh, Ms Rashmi Nanda Kumar, Gaurav Tyagi, Ms Mamta Saxena, Ramesh Singh, Pratap Venugopal, Ms Surekha Raman, Dileep Poolakkot, Ms Barsha Mishra (M/s K.J. John & Co.), Rohit Mammen Alex (for M/s Parekh & Co.), Ms Ruby Singh Ahuja, Ms A. Subhashini, Bhavanishankar V. Gadnis and Ms B. Sunita Roa, Advocates] for the appearing parties.

	Chronological list of cases cited	***on page(s)***
1.	(2006) 3 SCC 549, *Intellectuals Forum* v. *State of A.P.*	618*e-f*, 618*f-g*
2.	(2005) 2 SCC 164, *H.P. SEB* v. *Shiv K. Sharma*	621*d-e*, 621*g*, 622*b*, 622*f*
3.	(2003) 10 SCC 626, *Pratibha Nema* v. *State of M.P.*	605*a-b*, 605*b*
4.	(2001) 8 SCC 104, *State of H.P.* v. *Tarsem Singh*	621*a*, 621*g-h*, 622*b-c*, 622*c-d*, 622*d-e*
5.	(1999) 6 SCC 464, *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*	618*c*, 618*f*
6.	(1997) 1 SCC 388, *M.C. Mehta* v. *Kamal Nath*	617*f-g*, 618*f-g*
7.	(1995) 2 SCC 442, *Bajirao T. Kote* v. *State of Maharashtra*	605*b*
8.	AIR 1994 All 174, *Anurag Misra* v. *Ravindra Singh*	597*a*, 610*g-h*, 613*d*
9.	(1985) 2 SCC 152, *Fomento Resorts and Hotels Ltd.* v. *Gustavo Renato Da Cruz Pinto*	587*a*
10.	33 Cal 3d 419 (1983), *National Audubon Society* v. *Superior Court of Alpine County*	616*a*, 618*f-g*
11.	(1982) 33 Hastings LJ 653, 654, *National Audubon Society* v. *Deptt. of Water and Power*	616*f*

12.	(1980) 3 SCC 237, *State of W.B.* v. *Surendra Nath Bhattacharya*	604*c*, 604*d-e*
13.	247 NW 2d 457 (ND 1976), *United Plainsmen* v. *N.D. State Water Cons. Commission*	616*g*
14.	(1971) 1 SCC 671, *Jage Ram* v. *State of Haryana*	605*a-b*
15.	AIR 1965 SC 646, *State of W.B.* v. *P.N. Talukdar*	606*a-b*
16.	AIR 1964 SC 1230 : (1964) 6 SCR 784, *R.L. Arora (2)* v. *State of U.P.*	602*f-g*, 603*a-b*, 604*d-e*, 605*a-b*
17.	AIR 1963 SC 151, *Somawanti* v. *State of Punjab*	605*a-b*
18.	AIR 1962 SC 764 : 1962 Supp (2) SCR 149, *R.L. Arora (1)* v. *State of U.P.*	599*f*, 600*a*, 600*b*, 601*b*, 602*g*, 603*b*, 603*d-e*
19.	AIR 1956 SC 593 : 1956 SCR 451, *Nagubai Ammal* v. *B. Shama Rao*	596*g-h*, 610*g*, 612*c*, 612*c-d*, 612*f*, 612*f-g*
20.	AIR 1955 SC 298, *Collector of Bombay* v. *Nusserwanji Rattanji Mistri*	612*c*, 620*f-g*, 622*a-b*, 622*b*, 622*d-e*, 622*e*, 622*f*
21.	(1906-07) 34 IA 27, *Rani Chandra Kunwar* v. *Chaudhri Narpat Singh*	613*b-c*
22.	36 L Ed 1018 : 146 US 387 (1892), *Illinois Central Railroad Co.* v. *People of the State of Illinois*	615*d-e*
23.	(1840) 6 M&W 664 : 151 ER 579, *Slatterie* v. *Pooley*	613*b*
24.	244 NE 2d 577, *Robbins* v. *Deptt. of Public Works*	615*g*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— The abovenoted appeals are directed against an order dated 25-4-2000 passed by the Goa Bench of the High Court of Bombay in Writ Petition No. 330 of 1991, *Minguel Martins* v. *Sociedade De Fomento Industrial (P) Ltd.*; Writ Petition No. 36 of 1992, *Goa Foundation* v. *Fomento Hotels and Resorts Ltd.*; and Writ Petition No. 141 of 1992, *Gustavo Renato da Cruz Pinto* v. *State of Goa* whereby directions have been given for demolition of construction made in Survey No. 803 (new No. 246/2) within the area of Gram Panchayat, Taleigao, for resumption of the land acquired on behalf of Appellant 1, Fomento Resorts and Hotels Ltd., earlier known as M/s Gomentak Land Development (P) Ltd. and keeping public access to Vainguinim Beach from Point A to Point B shown in plan, Ext. A open without any obstruction of any kind.

2. For deciding the questions arising in the appeals, it will be useful to notice the relevant facts:

(*i*) Dr. Alvaro Remiojo Binto owned several parcels of land in Village Taleigao, District Tiswadi, Goa. He sold plots bearing Survey Nos. 803 and 804 (new Nos. 246/2 and 245/2) to Gustavo Renato da Cruz Pinto and plots bearing Survey Nos. 787 and 805 (new Nos. 246/1 and 245/1) to Sociedade De Fomento Industrial (P) Ltd. (Appellant 2 herein).

(*ii*) After purchasing the land, Appellant 2 leased out the same to Appellant 1. The latter submitted an application to the Gram Panchayat, Taleigao (for short "the Gram Panchayat") for grant of permission to construct a hotel complex near Vainguinim Beach. On a reference made by the Gram Panchayat, Chief Town Planner, Government of Goa, Daman and Diu vide his letter dated 1-8-1978 informed that the plans submitted by Appellant 1 are in conformity with the regulations in force a in the area but observed that right of the public to access the beach must be maintained by providing necessary footpath. Para 2 of that letter reads as under:

> b "*The road leading to the hotel complex is at present used by general public to approach Vainguinim Beach which is a popular picnic spot for the people of Panaji, as well as other parts of Goa. It will need to be ensured that the right of access to the beach is maintained by the applicant by providing the necessary footpath to the beach at an appropriate place. The parking facilities provided will also have to take care of the parking of vehicles of such members of the public in an appropriate manner. This will ensure that the beach remains open to public as it is at present and that the public is* c *not deprived of this beautiful and frequently used beach.*"
>
> (emphasis added)

(*iii*) Thereafter, the Gram Panchayat issued a letter dated 22-8-1978, whereby Appellant 1 was permitted to lay access road linking Dona-Paola-Bambolim Road to the construction site and construct the hotel subject to the conditions specified in the letter including the one d relating to public access to the beach. This was reiterated by the Sarpanch of the Gram Panchayat in his letter dated 1-12-1978.

(*iv*) In furtherance of the permission granted by the Gram Panchayat, Appellant 1 commenced construction of the hotel, which is now known as Hotel Cidade de Goa on the land forming part of Survey No. 787 (new e No. 246/1) and completed the same by May 1983 in different stages, the details of which are given below:

"*Period*	*Physical progress*	*Expenditure ex*
Up to December 1978	Site development.	Approx. Rs 15 lakhs
f January 1979 to December 1979	Site development and plinth level construction works of central facility area and first cluster.	Approx. Rs 20 lakhs
January 1980 to December 1980	Site development and shell work of central facility areas and first cluster of rooms.	Approx. Rs 40 lakhs
g January 1981 to December 1981	Complete structural works, complete civil works, complete interiors, complete air-conditioning, water supply, and sanitation and electrical works of central facility areas and first cluster of rooms. h	Approx. Rs 160 lakhs

January 1982 to December 1982	Complete air-conditioning, water supply and sanitation, and electrical works and civil works and interiors of second and third clusters of rooms.	Approx. Rs 210 lakhs
Up to May 1983	Complete air-conditioning, water supply and sanitation and electrical works and civil works and interiors of fourth cluster of rooms.	Approx. Rs 65 lakhs”

(*v*) During construction of the hotel building, Appellant 1 made an application dated 29-9-1979 to the Sarpanch of the Gram Panchayat, for permission to change the location of the footpath and parking area by stating that in view of installation of 10,000 kg gas tank (poisonous gas at high pressure), pressurised water tank and high voltage electric transformer near the hotel building, it will not be in public interest to locate the footpath and parking area at the sanctioned site.

(*vi*) The Sarpanch of the Gram Panchayat neither forwarded the application of Appellant 1 to the Town Planning Department for eliciting its views nor placed the same before the Gram Panchayat. Instead he, on his own, wrote a letter dated 29-9-1979 to Appellant 1 giving an impression that the Gram Panchayat does not have any objection to the change of location of the footpath and parking area. Thereafter, Appellant 1 is said to have shifted access to the beach from the location originally sanctioned. However, the maps produced before this Court during the course of hearing show that the footpath is still near the gas tank.

(*vii*) In the meanwhile, Shri Gustavo Renato da Cruz Pinto, Smt Surana Pepfira Pinto and Ms Befta Sara da Costa Pinto filed Special Civil Suit No. 313 of 1978/A in the Court of the Civil Judge, Senior Division, at Panaji against Appellant 2, Dr. Alvaro Remiojo Binto and four others for a decree of possession by pre-emption in respect of the land comprised in Survey Nos. 787 and 805 and also to restrain the defendants, their agents, servants, etc. from changing, alienating or raising any construction on the suit land by alleging that they were the owners of the property bearing Survey Nos. 803, 804, 806, 807, 788 and 789 situated at Taleigao and since time immemorial they and their predecessors were using footpath passing through Survey Nos. 787, 805 and 769 for going to Panaji-Dona-Paola-Bambolim Road, which was sought to be obstructed. Defendant 1 in the suit (Appellant 2 herein) filed a written statement to contest the suit. After some time, the parties compromised the matter in terms of which the plaintiffs gave up their claim for pre-emption in respect of plot bearing Survey Nos. 787 and 805 and Defendant 1 agreed to exchange the plot bearing Survey No. 790 with plots bearing Survey Nos. 788 and 789 belonging to the plaintiffs and also that it will have no right of access through any of the properties of the plaintiffs. As a sequel to this, the plaintiffs applied for withdrawal of the suit. By an order dated 20-12-1978, the Civil Judge permitted them to do so.

a (*viii*) Soon after withdrawal of the suit for pre-emption, Appellant 1 made an application dated 15-11-1978 to Shri Shankar Laad, Minister of Revenue, Government of Goa for acquisition of land comprised in Survey Nos. 788, 789, 803, 804, 806 and 807 (new Nos. 246/3, 246/4, 246/2, 245/2, etc.) of Village Taleigao, Dona-Paola for construction of Beach Resort Hotel Complex by highlighting its benefit to the State. b Paras 3 to 6 of the application, which have bearing on the decision of these appeals, read as under:

> "3. *It is proposed to put up a hotel complex in two phases; in the first phase it is proposed that a hotel building is put up in Plot No. 787 and in the second phase it is proposed that a yoga centre, health club and water sports facilities for promoting tourism are put in Plot* c *No. 805*. Our hotel project which is estimated to cost Rs 150 lakhs and will have 100 rooms in its first phase will add to meeting the much needed demand for accommodation by the international tourists.
>
> 4. In the first phase of the hotel complex it is necessary to develop Plot No. 787 and to immediately proceed to construct the d hotel building thereon. The land in Plot No. 787 consists of hilly and rocky area and the land abutting on the beach is also of different levels. In order to put up a hotel building in this plot it would be necessary to undertake cutting of rock which would disturb the topography of the area entailing considerable expense. It is, e therefore, necessary that the layout for the hotel building is finalised in a manner that the rock cutting is minimised and, at the same time, the natural surroundings of the rock and foliage are maintained. Exclusive cutting of rock is also likely to result in landslides and may pose danger to the foundation of the hotel buildings and its residents. It is, therefore, necessary to construct the hotel building as near the f beach as possible i.e. on the lowest level of the land abutting the beach.
>
> 5. *There are two small plots bearing Nos. 788 and 789 in the area abutting the beach. Those two small plots fall almost midway along the beach frontage of our said Plot No. 787 and project into the said plot. Those two small plots are on the lowest level of the* g *land and as such are most suited for including in the layout plan of the hotel. These two small plots being closest to the beach it is essential for us to install a first-aid post and a medical aid centre for providing safety measures to the people using the beach facilities. Besides, it is a precondition for a beach resort hotel giving comforts to provide those facilities both for the residents and for public at* h *large*. Keeping in view those factors it is necessary that these two small plots of land are immediately acquired and included in the

> layout plan of the hotel. It is also necessary that the acquisition of these two small plots of land is urgently completed and possession handed over to enable the layout plan of the hotel building to be a readjusted at this initial stage itself, on the ground prepared by proper levelling and terracing before the actual construction work could begin. It is, therefore, necessary that the two plots of land be urgently acquired in the first instance so that there is no delay whatsoever in implementing the first phase of the hotel project.
>
> 6. In order to take in hand the second phase of the hotel complex b it would be desirable to acquire Plots Nos. 803 and 804 which intervene between our second Plot No. 805 and our first Plot No. 787 and Plots Nos. 806 and 807 which adjoin our second Plot No. 805. This would enable us to undertake the second phase of the project as described above. The entire complex will then become one composite unit and these facilities could then be easily availed of by c the hotel residents and the residents of this territory. The facilities provided by the hotel will be open for use on membership to non-residents also. Such facilities are not readily and easily available to the people of this (*sic* territory)." (emphasis supplied)

(*ix*) Acting on the application made by the developer, the d Government of Goa issued Notification No. HD/LQN/315/78 dated 29-10-1980 under Section 4(1) of the Land Acquisition Act, 1894 (for short "the 1894 Act") for acquisition of the plots comprised in Survey No. 803 (new No. 246/2) and Survey No. 804 (new No. 245/2).

(*x*) After holding enquiry under Section 5-A of the 1894 Act, the State Government issued declaration under Section 6, which was e published in the Gazette dated 27-10-1983.

(*xi*) Gustavo Renato da Cruz Pinto and some others filed Writ Petition No. 8 of 1984 for quashing the aforementioned notifications on various grounds including the one that before acquiring the land, the Government did not make enquiry as per the requirement of Rule 4 of the Land Acquisition (Companies) Rules, 1963 (for short "the Rules"). The f writ petitioners also highlighted discrepancies in different notifications issued by the State Government. Respondent 2 in the writ petition (Appellant 1 herein) filed reply-affidavit stating therein that Rule 4 of the Rules is not mandatory and non-compliance therewith did not affect legality of the acquisition. In Paras 67 and 76 of the reply-affidavit, it was averred that a part of the project i.e. hotel is complete and has started g functioning. In Para 79, it was averred that besides the hotel project, cottages were proposed to be constructed on plot bearing Survey No. 805 and the acquired land in Survey Nos. 803 and 804 will be used for putting up health club, yoga centre, water sports and other recreational facilities, which are an integral part of the project.

(*xii*) By an order dated 26-6-1984, the Goa Bench of the High Court h of Bombay allowed the writ petition and quashed the impugned notifications only on the ground of non-compliance with Rule 4 of the Rules. That order was reversed by this Court in *Fomento Resorts and* a *Hotels Ltd.* v. *Gustavo Renato Da Cruz Pinto*[1] and the case was remitted to the High Court for deciding other grounds of challenge. It, however, appears that after the judgment of this Court, the parties compromised the matter and the writ petition was withdrawn on 26-3-1985.

(*xiii*) In the meanwhile, Appellant 1 entered into an agreement with the Government as per the requirement of Section 41 of the 1894 Act. b The agreement was signed on 26-10-1983. The opening three paragraphs and Clauses 3, 4 and 6 of the agreement read as under:

> "WHEREAS the principal objects for which the Company is established are, inter alia, construction of a tourism development project, etc. etc.
>
> c AND WHEREAS *for the purpose of the construction of this tourism development project comprising of a hotel at Curla, Vainguinim, Dona-Paola, Goa*, the Company has applied to the Government of Goa, Daman and Diu (hereinafter referred to as 'the Government') for acquisition under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as 'the said Act') of the d pieces of land containing 19,114 sq m, situated in the district of Tiswadi and more particularly described in the Schedule appended hereto and delineated in the plan hereunder annexed (hereinafter called 'the said land') for the following purpose, namely—Tourism Development Project—construction of hotel at Curla, Vainguinim, Taleigao.
>
> e AND WHEREAS *the Government being satisfied by an enquiry held under Section 40 of the said Act that the proposed acquisition is needed for the aforesaid purpose and the said work is likely to prove useful to the public*, has consented to acquire on behalf of the Company the said land, hereinbefore described.
>
> 3. The said land, when so transferred to and vested in the f Company shall be held by the Company as its property to be used only in furtherance of and for the purpose for which it is required subject nevertheless to the payment of the agricultural, non-agricultural or other assessments and cesses, if any, and so far as the said land is or may from time to time be liable to such assessments and cesses under the provisions of the law for the time g being in force.
>
> 4. (*i*) *The Company shall not use the said land for any purpose other than that for which it is acquired.*
>
> (*ii*) *The Company shall undertake the work of creation of sports and other recreational facilities/amenities within one year from the date on which the possession of the said land is handed over to the* h

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[1] (1985) 2 SCC 152

Company and complete the same within three years from the aforesaid date.

a (*iii*) Where the Government is satisfied after such enquiry as it may deem necessary that the Company was prevented by reasons beyond its control from creating the sports and other recreational amenities within the time specified in the agreement, the Government may extend the time for that purpose by a period not exceeding one year at a time so however that the total period shall not exceed six years. b

(*iv*) The Company shall keep at all times and maintain the said land and the amenities created thereon, in good order and condition to the satisfaction of the Government or any officer or officers authorised by the Government.

(*v*) The Company shall maintain all records of the Company properly and supply to the Government punctually any information c as may from time to time be required by the Government.

(*vi*) The Company shall not use the said land or any amenities created thereon for any purpose which in the opinion of the Government is objectionable.

(*vii*) The Company shall conform to all the laws and the rules d and guidelines made by the Government from time to time regarding preservation of ecology and environment.

(*viii*) *The Company shall never construct any building or structures in the acquired land. Prior approval of Eco-Development Council of the Government of Goa, Daman and Diu will be obtained before undertaking activities for its development, besides other* e *statutory requirements under the existing laws.*

(*ix*) *The public access/road to the beach shall not be affected or obstructed in any manner.*

* * *

6. In case the said land is not used for the purposes for which it is f acquired as hereinafter recited or is used for any other purpose or in case the Company commits breach of any of the conditions hereof, the said land together with the improvements, if any, affected thereon, shall be liable to resumption by the Government subject however, to the condition that the amount spent by the Company for the acquisition of the said land or its value as undeveloped land at the g time of resumption, whichever is less, but excluding the cost or value of any improvements made by the Company to the said land or any structure standing on the said land, shall be paid as compensation to the Company:

Provided that the said land and the amenities, if any, created thereon shall not be so resumed unless due notice of the breach h *complained of has been given to the Company and the Company has*

> *failed to make good the breach or to comply with any directions issued by the Government in this behalf, within the time specified in* a *the said notice for compliance therewith.*" (emphasis added)

(*xiv*) Although the agreement was signed on 26-10-1983, possession of the acquired land was given to Appellant 1 only after withdrawal of Writ Petition No. 8 of 1984 for which permission was granted on 26-3-1985.

(*xv*) After delivery of possession of the acquired land, Smt Anju b Timblo, Director of Appellant 1, made an application to Panjim Planning and Development Authority (hereinafter referred to as "the Development Authority") under Section 44(1) read with Section 49(1) of the Goa, Daman and Diu Town and Country Planning Act, 1974 (hereinafter described as "the Town and Country Planning Act") for grant of permission for extension of the existing hotel building on Survey Nos. c 246/1, 246/3 and 246/4 (old Survey Nos. 787, 788 and 789). The applicant did not seek extension of hotel building to Survey No. 246/2 apparently because of the express embargo contained in Clause 4(*viii*) of the agreement that the Company shall never construct any building or structure in the acquired land.

(*xvi*) The aforementioned application was considered by EEC in its d 23rd meeting held on 11-6-1987 and was favourably recommended subject to the condition that pedestrian path along the beach may be made available by constructing an access from the jetty so that public can reach the beach during the high tide period. Thereafter, the matter was considered in the meeting of EDC held on 11-9-1987 and it was decided to accept the recommendations of EEC, subject to the condition e regarding pedestrian path. The decision of EDC was communicated to Smt Anju Timblo by the Chief Town Planner vide his letter dated 14-10-1987, the relevant portion of which read as under:

> "In continuation of this Office Letter No. DE/4757(DZ/2009)3055/87 dated 10-7-1987, it is to inform that the project was discussed in the 10th meeting of the Eco-Development Council held f on 11-9-1987 and *the Council has cleared the project as per the plans submitted by you with a condition that pedestrian path be made available by construction of an access from the jetty so that the public can reach the beach even during high tide.*"
>
> (emphasis supplied)

(*xvii*) In furtherance of the decision taken by EDC, the Development g Authority issued an order under Section 44(3)(*c*) read with Section 49(2) of the Town and Country Planning Act whereby permission was granted to Appellant 1 for extension of the existing hotel building. The opening paragraph and Clause 10 of the conditions incorporated in that order, read as under:

> h "Whereas an application has been made by Shri/Smt Anju Timblo, development permission is issued for extension to the

> existing hotel building with respect to his/her land zoned as commercial zone bearing Survey No. 246 approved Sub No. 1, 3 and 4, Chalta No. P.T., Sheet No. ____ of Taleigao Village Town in accordance with the provisions of Sections 44(1)/49(1) of the Goa, Daman and Diu Town and Country Planning Act, 1974, read with Rule 13 of the Planning and Development Rules, 1977 framed thereunder. And whereas, a development charge affixed at Rs 84,170 has been paid by him/her. Therefore, under the powers vested in this Authority under Sections 44(3)(*c*)/49(2) of the Goa, Daman and Diu Town and Country Planning Act, 1974, the abovesaid applicant is granted development permission to carry out development in accordance with the enclosed plans subject to the following conditions:
>
> ‘ * * *
>
> > 10. The pedestrian path has to be made available by constructing an access from the jetty so that the public can reach the beach even during high tide.’ ”

(*xviii*) After some time another application was made on behalf of Appellant 1 under Section 46 read with Section 44 of the Town and Country Planning Act for renewal of the permission granted vide order dated 15-4-1988 with a deviation in respect of plots bearing Survey Nos. 246/1, 246/2, 246/3 and 246/4. Thus, for the first time, a request was made for raising construction in Survey No. 803 (new No. 246/2) in the garb of making deviation from the permission already granted. This application was not put up either before EEC or EDC and was straightaway considered by the Goa Town and Country Planning Board (for short “the Board”) in its meeting held on 20-6-1991 as an additional item and the following decision was taken:

> “The proposal relating to extension/deviation of Hotel Cidade de Goa which also involves relaxation in number of floors was considered and approved subject to the condition that the height shall not exceed the stipulated limit of 17.5 m which was applicable at the time when the project was approved.”

(*xix*) The above reproduced decision of the Board was forwarded by the State Government to the Development Authority. However, without even waiting for consideration by the competent body, Appellant 1 appears to have started construction by deviating from the approved plan. This compelled the Chairman of the Development Authority to send letter dated 12-7-1991 to Appellant 1 requiring it to refrain from going ahead with further construction.

(*xx*) It is not borne out from the record that matter relating to extension of the hotel building on plot bearing Survey No. 803 (new No. 246/2) was ever placed before EDC, but the Development Authority suo motu passed the order dated 20-4-1992 vide which permission was granted to Appellant 1 to carry out the development on plot bearing

Survey Nos. 246/1, 2, 3 and 4 subject to the terms and conditions specified therein, including the following:

a
> "Condition 10 of Order No. PDA/T/7471/297/88 dated 15-4-1988 should be strictly adhered to."

(*xxi*) When Appellant 1 started extension of the hotel building in violation of the permission accorded by EDC, Shri Minguel Martins, who claims to have purchased plots carved out of Survey No. 792 (new No. 242/1), popularly known as "Machado's Cove", filed Writ Petition
b
No. 330 of 1991, for issue of a direction to the State Government, Village Panchayat, Taleigao and other official respondents to remove the illegal construction made by Appellant 1, to refrain from granting any permission for construction or regularising the construction already made by Appellant 1 and also revoke the permission granted vide order dated 15-4-1988. He further prayed for issue of a direction to Respondents 1
c
and 2 in the writ petition (the appellants herein) to keep the traditional access to the beach open and not to put up any further construction on plots bearing Survey Nos. 787 and 803, which would interfere with the public road, parking lot and public access to the beach.

In Para 3 of his petition, Shri Minguel Martins made a mention of the alleged violation of the conditions contained in letters dated 1-8-1978
d
and 22-8-1978 issued by the Chief Town Planner and Sarpanch of the Gram Panchayat respectively by asserting that Respondents 1 and 2 (the appellants herein) have closed the road and footpath to the beach and commenced construction of the parking, which he has challenged in Writ Petition No. 284 of 1991. In Paras 5 to 7, he referred to the agreement dated 26-10-1983, and alleged that in complete violation of the mandate
e
thereof, Respondents 1 and 2 have made construction in Survey No. 803 and blocked public access to the beach. He also pleaded that even though the land was acquired for sports and recreational facilities and use thereof for any other purpose is prohibited by the terms of the agreement, the official respondents are trying to regularise illegal structures put up by Respondents 1 and 2 and even violation of CRZ is being ignored.
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Another plea taken by Shri Minguel Martins was that Respondents 1 and 2 have constructed sewerage treatment plant and laundry without obtaining permission from the competent authority under the Water (Prevention and Control of Pollution) Act, 1974 and the Environment Protection Act, 1986.

g
(*xxii*) In the reply-affidavit filed on behalf of Respondents 1 and 2 in Writ Petition No. 330 of 1991 (the appellants herein), it was pleaded that the petitioner is liable to be non-suited on the ground of laches and also on the ground that disputed questions of fact are involved. It was further pleaded that the writ petition has been instituted with an oblique motive at the instance of Dr. Alvaro de Souza Machado, one of the co-owners of Survey No. 792 and developer of Machado's Cove, namely, M/s Alcon
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Real Estate (P) Ltd., who filed Civil Suit No. 67 of 1986 for similar relief

but could not persuade the Civil Judge, Junior Division, Panaji to entertain their prayer for temporary injunction.

a The appellants alleged that after having failed to secure injunction from the civil court, Victor Albuquerque, the partner of M/s Alcon Real Estates (P) Ltd. filed Writ Petition No. 284 of 1991 and Minguel Martins filed Writ Petition No. 330 of 1991 and this was indicative of the fact that the petitioner was in collusion with the developer of Machado's Cove. They also questioned the locus of the petitioner by stating that plot bearing Survey No. 792 has not been sub-divided and he does not have b any interest in that property. On merits it was averred that road, car parking facilities and footpath leading to the beach have been provided in accordance with the condition imposed by the Chief Town Planner and Gram Panchayat and the same are in existence since 1979 and are being used by the public without any obstruction.

c The appellants denied existence of a pathway through Survey Nos. 792 and 803 and pleaded that members of the public do not have the right to access the beach through Survey No. 803. The appellants also relied on Section 16 of the 1894 Act and averred that even if there existed access to the beach through the acquired land, the same stood extinguished after vesting of the land in the Government, possession of which was given to Appellant 1 on 26-3-1985. d

On the issue of extension of hotel building, the appellants pleaded that additional construction was made in accordance with the permission granted vide order dated 15-4-1988 and after obtaining approval of the proposed deviation from the competent authority. As regards the laundry and water treatment plant, it was averred that temporary sheds were e constructed for laundry after obtaining permission from the Sarpanch of the Gram Panchayat and that treated effluents are intended to be used for gardening, manuring and other purposes for which no separate permission was necessary.

The appellants referred to Suit No. 313 of 1978/A filed by Gustavo Renato da Cruz Pinto and others for decree of possession by pre-emption f and averred that the so-called admissions made in the written statement about the existence of public pathway through plots bearing Survey Nos. 792 and 803 is not binding on them because contents of the written statement were not verified by the authorised representative of Appellant 2, on the basis of personal knowledge and in their rejoinder, even the plaintiffs had not accepted the existence of such pathway. In support of g their plea that there is no public pathway or access to the beach through Survey Nos. 792 and 803, the appellants relied on the judgment of Special Civil Suit No. 67 of 1986, *Alvaro De Souza Machado* v. *Sociedade De Fomento Industrial (P) Ltd.*

(*xxiii*) Goa Foundation, which is a registered society and is engaged in the protection of ecology and environment in the State of Goa and h Dr. Claudo Alvares, Secretary of the Goa Foundation filed Writ Petition

No. 36 of 1992 with prayers similar to those made in Writ Petition No. 330 of 1991. They also invoked Article 51-A(*g*) of the Constitution of a India and pleaded that Vainguinim Beach, which is a public asset, is sought to be privatised by the respondents (the appellants herein) and they have advertised the hotel in foreign countries as having a private beach. In Para 9 of Writ Petition No. 36 of 1992, the petitioners claimed that the villagers of Taleigao and general public have been using access to the beach that run through plots bearing Survey Nos. 792 and 803 b (new Nos. 242/1 and 246/2) in addition to the path running along the boundary of Survey No. 787 (new No. 246/1). They relied on the admissions contained in the written statement filed on behalf of Appellant 2 in Special Civil Suit No. 313 of 1978/A to show that public access to the beach exists through Survey No. 803 and pleaded that in complete disregard of agreement dated 26-10-1983, the appellants have c constructed hotel building without obtaining permission from the competent authority and they have unauthorisedly put up wall encircling those plots and thereby privatised Vainguinim Beach.

(*xxiv*) Shri Gustavo Renato da Cruz Pinto, who had earlier filed Special Civil Suit No. 313 of 1978/A for pre-emption, also joined the fray by filing Writ Petition No. 141 of 1992. He claimed that public d access to the beach through plot bearing Survey No. 803 has been blocked in utter violation of the conditions specified in the agreement dated 26-10-1983. Another plea taken by Gustavo Renato da Cruz Pinto was that the land was acquired under Section 40(1)(*b*) of the 1894 Act and, therefore, the respondents in the writ petition are duty-bound to provide amenities to the public in terms of agreement dated 26-10-1983, e which they have failed to do.

(*xxv*) The reply-affidavits filed in Writ Petitions Nos. 36 and 141 of 1992 were substantially similar to the counter filed in Writ Petition No. 330 of 1991 except that in the reply-affidavit of Writ Petition No. 36 of 1992, the appellants denied that they were trying to privatise Vainguinim Beach. They claimed that the disputed construction is located at a f distance of 200 metres from high tide line and about 1000 metres from Dona-Paola jetty. According to the appellants, the beach in question is not a type of coastal beach but has exclusiveness and in that sense it was advertised as a private beach. While defending Writ Petition No. 141 of 1992, Smt Anju Timblo claimed that there has been no violation of the agreement dated 26-10-1983 and the construction has been made after g obtaining permission from the competent authority. She also enclosed permission granted by the Sarpanch of the Gram Panchayat for putting up temporary shed for washing machines.

(*xxvi*) A separate reply-affidavit was filed by Shri Moraed Ahmed, Member-Secretary of the Development Authority in Writ Petition No. 330 of 1991. The substance of his affidavit was that the Development h Authority has neither granted approval to the deviation nor renewed the development permission of Appellant 1. He also referred to the illegal construction found at the time of inspections conducted on 15-5-1990 and 14-5-1991 which blocked public access to the river or reduced its width and averred that on being asked to do so, Appellant 1 demolished the obstruction/illegal construction. a

3. At the hearing of the writ petitions, learned counsel appearing on behalf of the petitioners did not press the grounds of challenge involving violation of CRZ Regulation and construction of sewerage treatment plant without obtaining permission/consent from the competent authority. After taking note of their statement, the High Court considered other issues raised b before it and held that the land was acquired under Section 40(1)(*b*); that the extension of the hotel building on an area measuring 1000 sq m of Survey No. 803 (new No. 246/2) and other constructions were legally impermissible.

4. The High Court negatived the argument of the appellants' counsel that in view of Section 16 of the 1894 Act encumbrance, if any, stood wiped out by observing that traditional public right of way cannot be strictly treated as c an encumbrance and existence of the way which was in use from time immemorial by the public openly, peacefully and continuously cannot be affected, more so, because in the agreement itself, access through Survey No. 803 (new No. 246/2) is acknowledged in the form of Clause 4(*ix*). The High Court also rejected the explanations given by the appellants for advertising the beach as a private beach and held that they cannot obstruct the passage by d putting up wall/barbed wire fencing. In the end, the High Court observed that after executing the agreement dated 26-10-1983, the State Government totally abandoned its duty and did not bother to ensure compliance with the condition incorporated in it.

5. On the aforesaid premises, the High Court allowed the writ petitions and gave the following directions: e

> (*a*) The constructions which have come up in Survey No. 246/2 (old No. 803) are required to be demolished and the authorities concerned shall take action in this respect, within a period of eight weeks from today and the compliance report within two weeks therefrom.
>
> (*b*) A notice for resumption of the land as required under proviso to f Clause 6 of the agreement dated 26-10-1983 shall be issued within ten weeks by the Government to the hotel to show cause as to why, in the circumstances, the acquired land should not be resumed. The Government shall then take appropriate decision in accordance with law.
>
> (*c*) The access which is shown in plan, Ext. A Colly which is at p. 33 of Writ Petition No. 141 of 1992 shall be kept open without any g obstruction of any kind from Points A-B in order to come from Machado's Cove side from Point A to Survey No. 803 (new No. 246/2) and then to go to the beach beyond Point B. We have already pointed out that this plan is to the scale.
>
> (*d*) The challenge relating to yellow access and shifting the same to purple access which is raised in Writ Petition No. 330 of 1991 has been h exhaustively dealt with in separate judgment in connected Writ Petitions

Nos. 284 of 1991 and 37 of 1992 and the order passed therein shall govern the said challenge.

a **6.** Before proceeding further, we consider it necessary to mention that during the pendency of these appeals, the appellants filed IAs for permission to file additional documents including copy of the agreement entered into between plot owners/developers of Machado's Cove (old Survey No. 792) with plot purchasers showing the pathway to be maintained in terms of order dated 9-4-1992 passed in WP No. 141 of 1992, photographs showing the b pathway and extension of the hotel building on Survey No. 803 (new No. 246/2) which is partly occupied by health club, gymnasium, beauty parlour, barber shop, steam, sauna, video games arcade and aerobics and part of circulation hall, kitchen, etc., photograph showing development of garden in Survey No. 803, a sketch showing the location of path as per Ext. A, copies of correspondence between the developer and Appellant 1 on the one hand c and functionaries of the State Government and Gram Panchayat on the other hand, orders of the Development Authority, letter dated 12-7-1991 of the Chairman of the Development Authority, pleadings of and/or evidence produced by the parties in Special Civil Suits Nos. 313 of 1978/A and 67 of 1986 and the judgment of Special Civil Suit No. 67 of 1986.

7. It is also apposite to mention that while issuing notice in Writ Petition d No. 141 of 1992, the High Court passed an interim order directing Appellant 1 to maintain the public access from Points A to B in Survey No. 803 (new No. 246/2). In the special leave petitions, Paras 1 and 2 of the directions contained in the High Court's order and action initiated for resumption of the land were stayed, but at the same time, the Court recorded that learned counsel for the petitioner has agreed that pathway from Points A to B in e Survey No. 246/2 as shown at p. 49 of Vol. II of the paper book in SLP (C) No. 9875 of 2000 shall be maintained till further orders [this page is a plan showing the status of various plots including Survey No. 803 (new No. 246/2) through which the public path passes from Points A to B].

8. Shri Anil B. Divan, learned Senior Counsel appearing for the appellant, argued that land in Survey Nos. 803 and 804 was acquired under f Section 40(1)(*aa*) and not under Section 40(1)(*b*) of the 1894 Act and the High Court committed serious error in recording a finding that the acquisition was under Section 40(1)(*b*). Learned Senior Counsel submitted that the expression "public purpose" appearing in clause (*aa*) of Section 40(1) is relatable to the purpose of company and not as the term is generally understood in the context of the provisions contained in Part II of the 1894 g Act. Shri Divan further submitted that in the absence of a specific stipulation to that effect in the notification published under Section 4(1) of the 1894 Act and the agreement dated 26-10-1983, the High Court was not justified in issuing a mandamus for providing access to the beach through that survey number.

h **9.** An alternative argument of Shri Divan is that the so-called public access to the beach through Survey No. 803 was running parallel to the nallah dividing Survey No. 803 on the one hand and Survey Nos. 804 and 805 on the other hand and no useful purpose will be served by insisting on maintaining that access because new path has been made available for access *a* to the beach by constructing road, car parking, etc. in compliance with the condition imposed by the Chief Town Planner in his letter dated 1-8-1978 and by the Gram Panchayat while granting permission for construction of hotel in Survey No. 787.

10. The learned Senior Counsel referred to the affidavit filed on behalf of the State Government before this Court and argued that when parties to the *b* agreement have clearly understood the terms thereof and EDC gave permission for construction of sports facilities and amenities without insisting that the same should be allowed to be used by members of the public, except on paying the specified fees, the High Court committed an error by issuing a mandamus for resumption of the land on the ground of the alleged violation of agreement dated 26-10-1983. The learned Senior *c* Counsel extensively referred to the pleadings of the three writ petitions and additional documents filed in these appeals to show that hotel building was extended on plot bearing Survey No. 803, after obtaining permission from EDC and the Development Authority and submitted that the irregularity, if any, committed in that regard will be deemed to have been regularised by the order dated 20-4-1992 passed by the Development Authority. *d*

11. Shri Divan relied on Clause 6 of the agreement and argued that even if the appellants can be said to have violated any of the conditions of the agreement, it is for the Government to take action for resumption of the land after giving opportunity to them to rectify the defect, etc. and the High Court could not have usurped the power of the Government and directed demolition of the disputed construction. The learned Senior Counsel also referred to the *e* judgment dated 13-3-2006 passed in Special Civil Suit No. 67 of 1986 and argued that in the face of unequivocal finding recorded by the competent court that there is no pathway from Survey No. 792 (Machado's Cove) to Survey No. 803, the direction given by the High Court for resumption of the land on the ground that access to the beach available to the public through Survey No. 803 (new No. 246/2) has been blocked in violation of the terms *f* of agreement dated 26-10-1983, is liable to be set aside.

12. Shri Divan further argued that the so-called admissions made in the written statement filed in Special Civil Suit No. 313 of 1978/A cannot be read against the appellants because the written statement was not signed by the authorised representative of Appellant 2 on personal knowledge and, in any case, the finding recorded by the competent court in Special Civil Suit *g* No. 67 of 1986 should be treated as conclusive on the issue of non-existence of passage through Survey No. 803. In support of this argument, learned Senior Counsel relied on the judgment of this Court in *Nagubai Ammal* v. *B.*

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Shama Rao[2] and of the Allahabad High Court in *Anurag Misra* v. *Ravindra Singh*[3].

a **13.** Shri Pallav Shishodia, learned Senior Counsel appearing on behalf of the State of Goa and other official respondent, adopted the arguments of Shri Anil Divan and submitted that right of the public to use the traditional passage through private land bearing Survey No. 803 (new No. 246/2) could, at the best, be treated as an easementary right which stood extinguished with the acquisition of land under Section 4(1) of the 1894 Act, and vesting b thereof in the State Government in terms of Section 16. Shri Shishodia referred to the counter-affidavit filed on behalf of the State in these appeals and submitted that once possession of the acquired land was taken by the Government free from all encumbrances, the writ petitioners could not have asked for an access to the beach through Survey No. 803 for members of the public. He submitted that if public is allowed to use Survey No. 803, there c will always be a possibility of threat to the security of the inmates of the hotel, which will affect inflow of tourists in the area and have adverse impact on the economy of the State.

14. Ms Indira Jaising, learned Senior Counsel for the Goa Foundation, referred to the Notification dated 29-10-1980 and agreement dated 26-10-1983 to show that the land in dispute was acquired for execution of d work for the benefit of general public and argued that the High Court did not commit any error by recording a finding that the acquisition was under Section 40(1)(*b*). She pointed out that the land was acquired with the sole object of enabling Appellant 1 to develop sports and recreational facilities/amenities which could be used by the occupants of the hotel rooms as also the general public and argued that the same cannot be said to be for e the purposes of the Company. Ms Jaising emphasised that on the date of acquisition, Appellant 1 had already constructed the hotel and argued that in the garb of creating facilities and amenities for the occupants of the hotel rooms, it could not have extended the hotel building on 1000 sq m of plot bearing Survey No. 803, and that too in violation of the express bar contained in Clause 4(*viii*) of the agreement dated 26-10-1983.

f **15.** Ms Jaising argued that the order dated 20-4-1992 passed by the Development Authority permitting construction on plot bearing Survey No. 803 is liable to be ignored in view of Clause 4(*viii*) of the agreement. She further argued that even if this Court comes to the conclusion that Appellant 1 could construct building on Survey No. 803 by way of extension of the existing hotel, the disputed construction cannot be saved because g permission of EDC was not obtained.

16. Ms Jaising invoked the doctrine of public trust and argued that in view of the unequivocal condition incorporated in Clause 4(*ix*) of the agreement that access to the beach will be maintained without any obstruction, right of the members of public to go to the beach through Survey

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[2] AIR 1956 SC 593 : 1956 SCR 451

[3] AIR 1994 All 174

No. 803 cannot be stultified by putting up wall/barbed wire fencing or by creating any other impediment. The learned Senior Counsel submitted that the beach in question is not a private beach and, therefore, the public at large cannot be denied the right to access the beach. She further submitted that if the appellants are allowed to prevent the public from going to the beach through the traditional path from the Dona-Paola-Bambolim Road through Survey Nos. 792 and 803, the same would amount to privatisation of the public beach, which is legally impermissible.

17. As regards the judgment in Special Civil Suit No. 67 of 1986, Ms Jaising submitted that the same is not relevant for deciding the issues raised in these appeals because neither any of the writ petitioners nor the State Government were parties to that litigation and, in any case, in view of the unequivocal stipulation contained in Clause 4(*ix*) of the agreement, Appellant 1 cannot wriggle out of its statutory obligation to maintain passage through plot bearing Survey No. 803.

18. Ms Jaising countered the submission of Shri Divan that in view of the availability of alternative access to the beach through the road, car parking and footpath constructed by Appellant 1, the High Court should not have insisted on continuing access to the beach through Survey No. 803 by asserting that the said access has been provided in terms of letter dated 1-8-1978 of the Chief Town Planner and permission granted by the Gram Panchayat vide letter dated 22-8-1978 in lieu of the access available to the public through Survey No. 787 and the same cannot be made basis for depriving members of the public to continue to avail access to the beach through the traditional path available to them through Survey No. 803. The learned Senior Counsel also pointed out that the alternative access is totally illusory because it ends on the rocks through which no person can easily go to the beach.

19. We have considered the respective arguments/submissions. The questions which require determination by this Court are:

> (*i*) Whether land bearing Survey Nos. 803 (new No. 246/2) and 804 (new No. 245/2) was acquired under Section 40(1)(*aa*) or it was an acquisition under Section 40(1)(*b*)?
>
> (*ii*) Whether any public access was available to the beach through Survey No. 803 (new No. 246/2) before its acquisition by the State Government and whether in terms of Clause 4(*ix*) of the agreement, Appellant 1 is required to maintain the said access/road to the beach, without any obstruction?
>
> (*iii*) Whether public access to the beach through Survey No. 803 (new No. 246/2) stood extinguished with the vesting of land in the State Government under Section 16 of the 1894 Act?
>
> (*iv*) Whether construction of hotel building on a portion of Survey No. 803 (new No. 246/2) is contrary to the purpose of acquisition and is violative of the prohibition contained in Clause 4(*viii*) of the agreement

dated 26-10-1983 and the High Court rightly directed demolition thereof in accordance with Clause 6 of the agreement?

a (*v*) Whether denial of the facilities and amenities created by Appellant 1 in Survey No. 803 (new No. 246/2) to the members of public is contrary to the purpose of acquisition and is also violative of the agreement and this could be made a ground for resumption of the acquisition of land?

Re: 1

b **20.** The decision of this question depends on the interpretation of Sections 40(1) and 41 of the 1894 Act. However, before adverting to those sections, we deem it proper to notice other relevant provisions. Section 4 provides for publication of a preliminary notification evidencing prima facie satisfaction of the Government that land in any locality is needed or is likely to be needed for any public purpose. This section prescribes the mode of c publication of notification and also indicates the steps which could be taken for survey, etc. of the land for deciding whether the same is fit for the purpose for which it is needed.

21. Section 5-A postulates giving of an opportunity to any person interested in the land to raise objection against proposed acquisition and casts d a duty on the Collector to hear the objector in person and submit his report to the Government. Section 6 postulates making of a declaration containing satisfaction of the appropriate Government arrived at, after considering the report, if any, made under Section 5-A(2) that the particular land is needed for a public purpose or for a company. This is subject to the provisions of Part VII of the Act.

e **22.** Section 39, which finds place in Part VII, lays down that the provisions of Sections 6 to 37 (both inclusive) shall not be put in force for acquiring land on behalf of a company under that part without the previous consent of the appropriate Government, and unless the company executes an agreement in terms of Section 41.

23. In *R.L. Arora (1)* v. *State of U.P.*[4] [hereinafter referred to as "*R.L.* f *Arora (1) case*"], the Constitution Bench considered the legality of the acquisition made on behalf of Lakshmi Ratan Engineering Works Ltd., Kanpur, which was engaged in manufacture of textile machinery parts. The appellant, who was the owner of the land, challenged the acquisition on the ground that it was not for a public purpose. It was argued on behalf of the appellant that the impugned acquisition cannot be treated to have been made g under Section 40(1)(*b*) of the Land Acquisition Act, merely because the products of the company, for which land is sought to be acquired will be useful to the public. It was urged that if Section 40(1) is given such an interpretation, the Government will become an agent for acquiring lands on behalf of the companies engaged in producing something which may be used by the public. The respondents argued that Section 40(1)(*b*) is of wide

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[4] AIR 1962 SC 764 : 1962 Supp (2) SCR 149

amplitude and land can be acquired under the Act for any company when the work set up by it is likely to prove useful to the public.

a **24.** The majority of the Constitution Bench in *R.L. Arora case*[4] held that Section 40(1)(*b*) must be read in conjunction with Section 41 to find out the intention of the legislature when it provides for acquisition of land for a company through the agency of the Government, and rejected the argument of the respondents by making the following observations: [*R.L. Arora (1) case*[4], AIR pp. 770-71, paras 13-14]

> b "*13.* … If we were to give the wide interpretation contended for on behalf of the respondents on the relevant words in Sections 40 and 41 it would amount to holding that the legislature intended the Government to be a sort of general agent for companies to acquire lands for them, so that their owners may make profits. It can hardly be denied that a company which will satisfy the definition of that word in Section 3(*e*) will be c producing something or the other which will be useful to the public and which the public may need to purchase. So on the wide interpretation contended for on behalf of the respondents, we must come to the conclusion that the intention of the legislature was that the Government should be an agent for acquiring land for all companies for such purposes as they might have provided the product intended to be produced is in a d general manner useful to the public, and if that is so there would be clearly no point in providing the restrictive provisions in Sections 40 and 41. The very fact therefore that the power to use the machinery of the Act for the acquisition of land for a company is conditioned by the restrictions in Sections 40 and 41 indicates that the legislature intended that land should be acquired through the coercive machinery of the Act e only for the restricted purpose mentioned in Sections 40 and 41, which would also be a public purpose for the purpose of Section 4. …
>
> *14.* Let us therefore turn to the words of Section 40(1)(*b*), which says that acquisition should be for some work which is likely to prove useful to the public. Now if the legislature intended these words to mean that even where the product of the work is useful to the public, land can be f acquired for the company for that purpose, the legislature could have easily used the words 'the product of' before the words 'such work'. The very fact that there is no reference to the product of the work in Section 40(1)(*b*) shows that when the legislature said that the work should be likely to prove useful to the public it meant that the work should be directly useful to the public through the public being able to use it g instead of being indirectly useful to the public through the public being able to use its product. We have no doubt therefore that when Section 40(1)(*b*) says that the work should be useful to the public it means that it should be directly useful to the public which should be able to make use of it. This meaning in our opinion is made perfectly clear by what is provided in the fifth term in Section 41. Before the machinery of the Act h

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[4] *R.L. Arora (1)* v. *State of U.P.*, AIR 1962 SC 764 : 1962 Supp (2) SCR 149

> can be put into operation to acquire land for a company, the Government has to take an agreement from the company, and that agreement must a provide, where acquisition is needed for the construction of some work and that work is likely to prove useful to the public, the terms on which the public shall be entitled to use the work."

25. With a view to overcome the difficulty created in the acquisition of land for private companies on account of the judgment in *R.L. Arora (1) case*[4], clause (*aa*) was inserted in Section 40(1) by the Land Acquisition b (Amendment) Act, 1962. Section 40 (as it stands after the 1962 amendment) and Sections 41 and 42 of the 1894 Act read as under:

> "40. *Previous enquiry*.—(1) Such consent shall not be given unless the appropriate Government be satisfied, either on the report of the Collector under Section 5-A, sub-section (2), or by an enquiry held as hereinafter provided,—
>
> c (*a*) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith, or
>
> (*aa*) that such acquisition is needed for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, or
>
> d (*b*) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.
>
> (2) Such enquiry shall be held by such officer and at such time and place as the appropriate Government shall appoint.
>
> (3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as e possible, in the same manner as is provided by the Code of Civil Procedure, 1908 (5 of 1908) in the case of a civil court.
>
> 41. *Agreement with appropriate Government*.—If the appropriate Government is satisfied after considering the report, if any, of the Collector under Section 5-A, sub-section (2), or on the report of the officer making an inquiry under Section 40 that the proposed acquisition is for any of the f purposes referred to in clause (*a*) or clause (*aa*) or clause (*b*) of sub-section (1) of Section 40, it shall require the company to enter into an agreement with the appropriate Government, providing to the satisfaction of the appropriate Government for the following matters, namely:
>
> (1) the payment to the appropriate Government of the cost of the acquisition;
>
> g (2) the transfer, on such payment, of the land to the company;
>
> (3) the terms on which the land shall be held by the company;
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> (4) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided;

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[4] *R.L. Arora (1)* v. *State of U.P.*, AIR 1962 SC 764 : 1962 Supp (2) SCR 149

> (4-A) where the acquisition is for the construction of any building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, the time within which, and the conditions on which, the building or work shall be constructed or executed; and *a*
>
> (5) where the acquisition is for the construction of any other work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work.
>
> 42. *Publication of agreement*.—Every such agreement shall, as soon as may be after its execution, be published in the Official Gazette and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act." *b*

26. In this case, we are not concerned with clause (*a*) of Section 40(1) of the 1894 Act because the land in Survey Nos. 803 (new No. 246/2) and 804 (new No. 245/2) was not acquired for erection of dwelling houses for workmen employed by Appellant 1 or for provision of amenities directly connected therewith. The dispute between the parties centres round the remaining two clauses of Section 40(1). According to the appellants, the acquisition was under clause (*aa*), whereas the writ petitioners (the private respondents herein) pleaded that the acquisition was under clause (*b*). A careful reading of the two clauses shows that while clause (*aa*) envisages acquisition for the construction of some building or work for a company which is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose, clause (*b*) refers to acquisition for construction of some work which is likely to prove useful to the public. The difference in the language of the two clauses clearly brings out this distinction. In the second part of clause (*aa*), the legislature has used the expression "in any industry or work which is for a public purpose". This means that the particular acquisition can be treated to have been made under that clause if it is for construction of some building or work for a company which is engaged or is likely to engage itself in any industry or work which may not necessarily be useful to the public in general. As against this, usefulness of the construction of some work to the general public is sine qua non for acquisition under clause (*b*). *c* *d* *e* *f*

27. The expression "public purpose" used in clause (*aa*) was interpreted in *R.L. Arora (2)* v. *State of U.P.*[5] [hereinafter referred to "*R.L. Arora case (2)*"] which was instituted by the landowner for striking down the amendment made in 1961 for validating the acquisition, which was quashed in *R.L. Arora (1) case*[4]. It was argued on behalf of the petitioner that even if the amendment was not treated ultra vires the provisions of the Constitution, the disputed acquisition is liable to be annulled because the condition prescribed in clause (*aa*) of Section 40(1) was not fulfilled, inasmuch as the acquisition was not for a public purpose. It was submitted that unless there *g*

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[5] AIR 1964 SC 1230 : (1964) 6 SCR 784

[4] *R.L. Arora (1)* v. *State of U.P.*, AIR 1962 SC 764 : 1962 Supp (2) SCR 149

was any direct connection or close nexus between the articles produced by the company and general good of the public, the impugned acquisition a cannot be treated as covered by clause (*aa*). The majority of the Constitution Bench rejected this argument and held: [*R.L. Arora (2) case*[5], AIR pp. 1236-38, para 9]

> "*9.* In approaching the question of construction of this clause, it cannot be forgotten that the amendment was made in consequence of the decision of this Court in *R.L. Arora (1) case*[4] and the intention of b Parliament was to fill the lacuna, which, according to that decision, existed in the Act in the matter of acquisitions for a company; … Further, a literal interpretation is not always the only interpretation of a provision in a statute and the Court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used c which would control the literal meaning of the words used in a provision of the statute. … Therefore, we have to see whether the provision in clause (*aa*) bears another construction also in the setting in which it appears and in the circumstances in which it was put on the statute book and also in view of the language used in the clause. The circumstances in which the amendment came to be made have already been mentioned by d us and the intention of Parliament clearly was to fill up the lacuna in the Act which became evident on the decision of this Court in *R.L. Arora (1) case*[4]. ... It was only for such a company that land was to be acquired compulsorily and the acquisition was for the construction of some building or work for such a company i.e. a company engaged or about to be engaged in some industry or work which is for a public purpose. In e this setting it seems to us reasonable to hold that the intention of Parliament could only have been that *land should be acquired for such building or work for a company as would subserve the public purpose of the company*; it could not have been intended, considering the setting in which clause (*aa*) was introduced, that land could be acquired for a building or work which would not subserve the public purpose of the f company. ... Further, acquisition is for the construction of some building or work for a company and the nature of that company is that it is engaged or is taking steps for engaging itself in any industry or work which is for a public purpose. When therefore the building or work is for such a company it seems to us that it is reasonable to hold that the nature of the building or work to be constructed takes colour from the nature of g the company for which it is to be constructed. We are therefore of the opinion that the literal and mechanical construction for which the petitioner contends is neither the only nor the true construction of clause (*aa*) and that when clause (*aa*) provides for acquisition of land needed for construction of some building or work it implicitly intends that the

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[5] *R.L. Arora (2)* v. *State of U.P.*, AIR 1964 SC 1230 : (1964) 6 SCR 784

[4] *R.L. Arora (1)* v. *State of U.P.*, AIR 1962 SC 764 : 1962 Supp (2) SCR 149

> building or work which is to be constructed must be such as *to subserve the public purpose of the industry or work in which the company is engaged or is about to be engaged*. In short, the words 'building or work' used in clause (*aa*) take their colour from the adjectival clause which governs the company for which the building or work is being constructed ... It is only in these cases where the company is engaged in an industry or work of that kind and where the building or work is also constructed for a purpose of that kind, which is a public purpose, that acquisition can be made under clause (*aa*). As we read the clause we are of the opinion that the public purpose of the company for which acquisition is to be made cannot be divorced from the purpose of the building or work and it is not open for such a company to acquire land under clause (*aa*) for a building or work which will not subserve the public purpose of the company." (emphasis supplied)

28. The same question was again considered in *State of W.B.* v. *Surendra Nath Bhattacharya*[6]. In that case, acquisition was made on behalf of a company which was carrying on the business of manufacturing of sodium silicate, plaster of paris, etc. The manufactured goods of the company were widely used all over India, saving large amount of foreign exchange which was earlier used for importing similar goods. The Division Bench of the Calcutta High Court quashed the acquisition on the ground that it was not for a public purpose. After noticing the majority judgment in *R.L. Arora (2) case*[5], the Court held: (*Surendra Nath case*[6], SCC p. 243, para 10)

> "*10.* The effect of the observations made above leads to the irresistible conclusion that the words 'public purpose' are not to be interpreted in a restricted sense but takes colour from the nature of the industry itself, the articles that it manufactures and the benefit to the people that it subserves. This Court clearly indicated that the land should be acquired for building or work which would serve the *public purpose of the company* and not public purpose as it is generally understood. In the instant case, we have also set out the nature of the products of the company and have stressed the fact that the articles produced by the company are used for the benefit of the people and as it saves lot of foreign exchange, it is unmistakably for the general good of the country, particularly from the economic point of view. In these circumstances, it cannot be said that the object of the company in extending its operations by enlarging the area of its production was not for the public purpose of the company. Taking an overall picture of the nature of the products of the company, its various activities, the general public good that it seeks to achieve and the great benefit that the people derive, it cannot be said that the acquisition, in the present case, was not for a public purpose. According to the test laid down by this Court, it is sufficient if it is shown

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[6] (1980) 3 SCC 237

[5] *R.L. Arora (2)* v. *State of U.P.*, AIR 1964 SC 1230 : (1964) 6 SCR 784

> that the building sought to be built or the work undertaken subserves the public purpose of the company which is completely fulfilled in this case."
>
> a (emphasis in original)

29. In *Pratibha Nema* v. *State of M.P.*[7] this Court analysed the provisions of Parts II and VII of the 1894 Act, referred to the earlier judgments in *Somawanti* v. *State of Punjab*[8], *R.L. Arora (2) case*[5], *Jage Ram* v. *State of Haryana*[9], *Bajirao T. Kote* v. *State of Maharashtra*[10] and observed: (*Pratibha case*[7], SCC pp. 640 and 642, paras 19 and 22)

> b "*19.* These decisions establish that a public purpose is involved in the acquisition of land for setting up an industry in the private sector as it would ultimately benefit the people. However, we would like to add that any and every industry need not necessarily promote public purpose and there could be exceptions which negate the public purpose. But, it must be borne in mind that the satisfaction of the Government as to the c existence of public purpose cannot be lightly faulted and it must remain uppermost in the mind of the court.
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> * * *
>
> *22.* Thus, the distinction between public purpose acquisition and Part VII acquisition has got blurred under the impact of judicial interpretation d of relevant provisions. The main and perhaps the decisive distinction lies in the fact whether the cost of acquisition comes out of public funds wholly or partly. Here again, even a token or nominal contribution by the Government was held to be sufficient compliance with the second proviso to Section 6 as held in a catena of decisions. The net result is that by contributing even a trifling sum, the character and pattern of e acquisition could be changed by the Government. In ultimate analysis, what is considered to be an acquisition for facilitating the setting up of an industry in the private sector could get imbued with the character of public purpose acquisition if only the Government comes forward to sanction the payment of a nominal sum towards compensation. In the present state of law, that seems to be the real position."

f **30.** Section 41 lays down that if the appropriate Government is satisfied, after considering the report, if any, of the Collector under Section 5-A(2) or on the report of the officer making an inquiry under Section 40, that the proposed acquisition is for any of the purposes referred to in clauses (*a*) or (*aa*) or clause (*b*) of sub-section (1) of Section 40, then it shall require the company to enter into an agreement on the matters enumerated in clauses (1) g to (5) of Section 41. Clause (4-A) of Section 41, which is relatable to an acquisition under Section 40(1)(*aa*), requires that the agreement must indicate the time within which and the conditions on which the building or work shall be constructed or executed. Clause (5) of Section 41, which is relatable to an acquisition under Section 40(1)(*b*), also postulates indication of time within which work is executed or maintained and the terms on which public shall be entitled to use the work. a

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[7] (2003) 10 SCC 626

[8] AIR 1963 SC 151

h [5] *R.L. Arora (2)* v. *State of U.P.*, AIR 1964 SC 1230 : (1964) 6 SCR 784

[9] (1971) 1 SCC 671

[10] (1995) 2 SCC 442

31. In *State of W.B.* v. *P.N. Talukdar*[11] this Court considered a question similar to Question 1 framed by us and observed: (SCC pp. 652-53, para 12)

> "*12.* … generally speaking the appropriate Government would not state in so many words whether it was proceeding under clause (*a*), or clause (*aa*) or clause (*b*). The question whether consent has been given under one clause or the other or more than one clause has to be decided on the basis of the agreement and the notification under Section 6. We have also no doubt that it is open to the appropriate Government to give consent on being satisfied as to one of the three clauses only or as to more than one clause. In the present case reliance has been placed on behalf of the State Government on all the three clauses and particularly on clauses (*aa*) and (*b*), to show that the consent was given after keeping in mind all the three clauses of Section 40(1). The question as to which clause of Section 40(1) was acted upon by the State Government to give consent is important because on that will depend the nature of the agreement which has to be made under Section 41. Where the purpose of the acquisition is as mentioned in clause (*a*), the agreement has to provide for the time within which, the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided. Where the consent is based on clause (*aa*), the agreement is to provide for the time within which and the conditions on which, the building or work shall be constructed or executed. Where the consent is given on the basis of clause (*b*), the agreement is to specify the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use the work. It will be seen from the above that there are bound to be differences in the terms to be embodied in an agreement under Section 41 depending upon whether the consent was given." b c d e

32. In the light of the above, we shall now consider whether on a conjoint reading of the Notification dated 29-10-1980 and agreement dated 26-10-1983, acquisition of Survey Nos. 803 and 804 (new Nos. 246/2 and 245/2) can be treated as having been made under Section 40(1)(*aa*) or was it an acquisition under Section 40(1)(*b*) of the 1894 Act. f

33. A brief recapitulation of the facts shows that soon after commencing work for construction of the hotel, Appellant 1 approached the State Government for acquisition of land comprised in various survey numbers including Survey Nos. 803 and 804 (new Nos. 246/2 and 245/2) by indicating that the first phase of its project envisages construction of hotel building in Survey No. 787 and in the second phase, it was intending to put up a yoga centre, health club and water sports facilities in Survey No. 805 for g h promoting tourism, which will also be useful to the general public. Appellant 1 pointed out that two small plots bearing Survey Nos. 788 and 789, abutting *a* the beach, are required for installing a first-aid post and a medical aid centre, which are necessary for beach resort hotel and for providing safety measures and facilities to the residents of the hotel and also for the public at large, using the beach. Appellant 1 then submitted that for the second phase of the hotel complex, it will be desirable to acquire Survey Nos. 803 and 804 so that the entire complex will become one composite unit. In the end, Appellant 1 *b* indicated that the facilities provided by the hotel will be open for use to the non-residents on membership basis.

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[11] AIR 1965 SC 646

34. The notification issued by the State Government under Section 4(1) shows that the land was needed for a public purpose, namely, the tourism development project—construction of hotel at Curla, Vainguinim, Taleigao. In our view, as Appellant 1 was engaged in executing a project of tourism *c* development i.e. construction of hotel along with amenities like yoga centre, health club and water sports facilities, acquisition of Survey Nos. 803 and 804 (new Nos. 246/2 and 245/2) was clearly relatable to its project. This is also borne out from the language of the agreement dated 26-10-1983, which records satisfaction of the Government that the land was needed for the purpose of executing tourism development project of Appellant 1.

d **35.** Clause 4(*ii*) of the agreement dated 26-10-1983 shows that Appellant 1 was required to undertake the work of creation of sports and recreational facilities/amenities within one year of getting possession and complete the same within three years. This work was certainly ancillary to the tourism development project being executed by Appellant 1. Therefore, there is no escape from the conclusion that the acquisition was under Section 40(1)(*aa*) *e* of the 1894 Act and the contrary finding recorded by the High Court is legally unsustainable. It is also necessary to bear in mind that tourism is an important industrial activity in Goa which attracts tourists from all over the country and abroad. A huge amount of foreign exchange is generated by this industry apart from providing employment and ancillary benefits to a large section of the population of the State. Therefore, acquisition of land for *f* tourism development project is certainly for a public purpose.

Re: 2

36. For deciding the question whether public access to the beach was available through Survey No. 803 (new No. 246/2) before its acquisition in the year 1980, it will be profitable to notice the pleadings of the parties and contents of the documents produced by them. In all the writ petitions, the *g* petitioners claimed that there exists passage through Survey No. 803 which is being used by the public for many years for going to the beach. In Para 6 of his writ petition, Minguel Martins referred to the affidavit of Avdhut Kamat filed by Appellant 2 in the civil suit for a decree of pre-emption instituted by Gustavo Renato da Cruz Pinto and two others. In other two petitions, the writ *h* petitioners relied on the averments contained in the written statement filed on behalf of Appellant 2 in Special Civil Suit No. 313 of 1978/A to support their assertion regarding existence of access to the beach through Survey No. 803. Gustavo Renato da Cruz Pinto also placed on record a copy of the affidavit of Avdhut Kamat and plan prepared by him showing access to the beach from Points A to B in Survey No. 803. In that plan starting point of access from the beach was at Point B in Survey No. 803 and it ended at Point A touching the northern boundary of that survey number towards Machado's Cove.

37. In Paras 2-F to 2-O, 2-R, 2-S, 3-E and 3-H of the written statement filed on behalf of Appellant 2 in Special Civil Suit No. 313 of 1978/A, the following averments were made:

> "2-F. As shown before, properties 803, 804, 787, 788, 789 and 805 are bounded on the south by seashore beyond which River Zuari lies. *A part of this shore which forms the boundary to the said properties is used as public way. This public way after passing through the seashore and some private road goes up to Dona-Paola jetty. This public way is used by the members of the public including the fisher folk to go from the said seashore up to Dona-Paola jetty and vice versa, from time immemorial, without objection whosoever, openly, peacefully and continuously and as a matter of right.*
>
> 2-G. *The beach existing at the south of properties 803 and 787 is a public resort and it is visited by members of the public from all parts of Llhas Taluka. For this purpose there is a ramp (stone construction) built on the ground in property 803 as a means of access to the beach. There is also a similar ramp in property 787. The existence of the ramps and the date of their construction is lost in antiquity but has been known to exist at least for the last seventy years.*
>
> 2-H. *In order to have access to the portion of the beach existing in property 803, there is a footpath starting from the ramp and going towards north up to the culvert linking property 803 with property 792 of Machado; therefrom after crossing the property of Machado in the same direction, it touches the public footpath going from Dona-Paola to Calapur. At present, the said footpath touches the Panaji-Dona-Paola-Bambolim Road and crosses the property of Machado.*
>
> 2-I. *The way mentioned in the preceding Para 2-H is being used by members of the public living in Village Calapur and also by other members of the public coming from different parts of Taluka Llhas. This way is clearly visible on site.*
>
> 2-J. *The plaintiffs' family have access to properties 803, 804, 788 and 789 through the said way mentioned in Para 2-H and they have been using this access for the last fifty years.* The family of the plaintiffs have their residential house at St. Cruz Village and this way is the nearest way for them.
>
> 2-K. *The access to properties 788 and 789 of the plaintiffs' family is through property 803 and through the portion of the beach used as a public way and standing on the southern side.*

> 2-L. The access to property 804 is through property 803 and for that purpose there exists a culvert.
>
> a 2-M. The access to property 806 is in the continuation of the way leading from properties 803 and 804 and then going to the beach and to property 806. Property 806 has also direct access to the seashore which is used as public way.
>
> 2-N. It is not true that the way to property 806 goes from property 805 as represented in the map annexed to the plaint.
>
> b 2-O. The access to property 807 is through the property of Machado, Survey No. 792 and more particularly the way which goes just in line with the eastern boundary of the property of Machado. This latter was given access also to property 806 after passing through properties which stand at the east of properties 807 and 805. As represented in the map annexed to the plaint, 807 has access through 804 and 803. c
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> 2-R. The members of the public coming through the way mentioned in Para 2-P were using either the portion of beach in property 787 or the portion of beach in property 803. Whenever they were using the ramp existing in property 803, they used the way which connects the footpath mentioned in Para 2-P with the footpath stated in Para 2-H and thereafter d they were going to the ramp through the way mentioned in Para 2-H.
>
> 2-S. *The ways mentioned in Paras 2-F, 2-H and 2-P have been used by the members of the public and villagers from time immemorial, openly, peacefully, continuously in order to come to the beach and they are public ways and have been so dedicated as is evidenced by the long and continuous user.* e
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> * * *
>
> 3-E. *From this parking place a footpath is maintained alongside the eastern boundary of property 787 and western boundary of property 803 going to the south up to the seashore.*
>
> f 3-H. *The plaintiffs have not come to the Court with clean hands and hence deliberately omitted to represent in the map annexed to the plaint the ramps existing in properties 787 and 803 and giving access to the beach.* Similarly the plaintiffs have deliberately omitted to represent in the map the public way mentioned in Paras 2-H and 3-E; the plaintiffs have further deliberately, in order to snatch injunction, wrongly represented the way mentioned in Para 2-K." (emphasis added)

g **38.** Along with the written statement, Appellant 2 filed affidavit of Shri Avdhut Kamat, who was engaged as consulting engineer for the hotel project. In Para 2 of his affidavit, Shri Kamat stated as under:

> "2. I say that under instructions from said Fomento, I have prepared a plan of property bearing Survey Nos. 787 to 807. The properties with h Survey Nos. 787, 790, 798, 800, 801, 802 and 805 have been purchased by said Fomento from Defendants 2 to 5. The plan has been drawn by me

> taking into consideration the old survey, new survey and present position on the site. The new numbers of the survey are also shown in the plan. On the said plan, *I have shown existing public pathways by red pencil lines. From the said plan it appears that none of the defendant's lands (all of which are hatched on the plan) are, in fact, enclosed property, since all of them have access to public ways*. The pathways marked red in the plan have been personally checked by me with the assistance of my Assistant Engineers and can be verified on the site."
>
> (emphasis added)

The affidavit of Shri Kamat was accompanied by the plan marked as Ext. A which depicted various pathways including the one going from the beach to Dona-Paola-Bambolim Road through Survey Nos. 803 and 792.

39. In the reply-affidavit filed in Writ Petition No. 141 of 1992, Appellant 1 did not dispute the correctness of the written statement filed in Special Civil Suit No. 313 of 1978/A or the affidavit of Shri Avdhut Kamat and plan prepared by him after personally inspecting the site. The High Court relied on the averments contained in the written statement and held that the existence of public access to the beach/pathway leading to the beach through Survey No. 803 cannot be doubted.

40. Shri Anil Divan, learned Senior Counsel appearing for the appellants heavily relied on the judgment dated 13-3-2006 passed by the Civil Judge, Panaji in Special Civil Suit No. 67 of 1986, *Alvaro De Souza Machado* v. *Sociedade De Fomento Industrial (P) Ltd.* and argued that the finding recorded by the High Court on the issue of existence of public access to the beach through Survey No. 803 should be treated as redundant because the same is entirely based on admissions made in the written statement filed on behalf of Appellant 2 in Special Civil Suit No. 313 of 1978/A and the competent court has found that the same are not binding on the appellants (who were the defendants in Special Civil Suit No. 67 of 1986). He pointed out that the learned Civil Judge, Panaji has found that the written statement was not verified by the person concerned on personal knowledge and, therefore, admissions made therein cannot be made the basis for recording an adverse finding against the defendants in the suit. In the first blush, this argument of the learned Senior Counsel appears attractive but on a closer scrutiny, we do not find any merit in it.

41. The learned Civil Judge who decided the suit filed by Alvaro De Souza Machado and another relied upon the judgment of this Court in *Nagubai Ammal* v. *B. Shama Rao*[2] and of the Allahabad High Court in *Anurag Misra* v. *Ravindra Singh*[3] and held that the admissions made in the earlier suit in Paras 2-A, 2-C, 2-E, 2-F to 2-S, etc. cannot be treated as binding on the defendants because contents of the written statement were verified by using the words "true to the best of my information which I believe as true" and not on personal knowledge. This approach of the learned

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[2] AIR 1956 SC 593 : 1956 SCR 451

[3] AIR 1994 All 174

Civil Judge was clearly contrary to Order 6 Rule 15 of the Code of Civil Procedure, which provides for verification of pleadings.

a **42.** Sub-rule (1) of Rule 15 lays down that:

> "15. *Verification of pleadings*.—(1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case."

b Sub-rule (2) lays down that:

> 15. (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true.

Sub-rule (3) requires that:

> c 15. (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed.

By amending Act 46 of 1999 the requirement of filing an affidavit by the person verifying the pleadings was incorporated but that provision does not have any bearing on this case. The plain language of Order 6 Rule 15(2) makes it clear that the pleadings can be verified by the person concerned on d his own knowledge or upon the information received and believed to be true by him/her.

43. The written statement filed on behalf of Appellant 2 in Special Civil Suit No. 313 of 1978/A was verified by Smt Anju Timblo who represented the appellants' cause before various functionaries of the State Government and its instrumentalities and also filed reply-affidavits in different writ e petitions. Smt Anju Timblo did not claim that she is acquainted with the topography/ geography of the area which included Survey Nos. 792 and 803. Therefore, she could not have verified the written statement containing the admission regarding existence of passage/pathway to the beach through Survey No. 803 on her own knowledge. Therefore, verification of the written statement containing admission about the existence of passage through f Machado's Cove and Survey No. 803 on the basis of information which she believed to be true was in consonance with Order 6 Rule 15(2) and the learned Civil Judge committed an error in holding that the admissions contained in the written statement of the earlier suit were not binding on the defendants.

44. Another error committed by the learned Civil Judge was that he g altogether overlooked the statement made by Smt Anju Timblo, who appeared as a witness on behalf of the defendants in Special Civil Suit No. 67 of 1986 and candidly accepted in the cross-examination that the written statement filed in Special Civil Suit No. 313 of 1978/A contained admissions about existence of access to the beach through Survey No. 803. It is also significant to note that neither the writ petitioners nor the State of Goa were h parties to the second suit and, therefore, they did not get opportunity to show that admissions contained in the written statement of Appellant 2 in Special

Civil Suit No. 313 of 1978/A were rightly relied upon by the High Court and the learned Civil Judge could not have taken a contrary view.

a **45.** It was neither the pleaded case of the appellants before the High Court nor was it argued on their behalf that the admissions contained in the written statement filed in the previous suit about existence of access to the beach from Dona-Paola-Bambolim Road through Survey Nos. 792 (Machado's Cove) and 803 were made under a bona fide mistake and the affidavit of Shri Avdhut Kamat and the sketch prepared by him were contrary to the actual physical status of various survey numbers mentioned therein. b Therefore, the High Court cannot be said to have erred in relying upon the admissions made in the written statement of Appellant 2 in Special Civil Suit No. 313 of 1978/A that there existed access to the beach through Survey Nos. 792 and 803 before its acquisition by the State Government.

46. The propositions of law laid down in *Nagubai Ammal case*[2] and *Nusserwanji Rattanji Mistri case*[12] on which reliance has been placed by Shri c Divan do not have any bearing on the case in hand. In *Nagubai Ammal case*[2] this Court considered the legality of the sale made in execution of decree passed on a mortgage deed. The appellants, who were defendants in the suit for declaration of title to certain building sites, resisted the respondents' claim based on the purchase made in execution of the mortgage decree. That suit was decreed in 1921 and the lands were purchased by the decree-holder d in 1928. The mortgager was adjudged an insolvent in 1926. Suit to enforce the mortgage deed was brought in 1933 impleading the Official Receiver and the purchaser in execution of the maintenance and charge decree, but the appellants were not impleaded as parties. In execution of the decree passed in the second suit, the lands were sold to a third party. The respondents' father purchased the land in 1938 from the said third party. The learned District e Judge held that the appellants' title acquired by the purchase of 1920 stood extinguished by the sale held in execution of the charge decree by operation of Section 52 of the Transfer of Property Act.

47. Before the Supreme Court, the appellants in *Nagubai Ammal case*[2] relied on the admission made by Abdul Huq (predecessor of the f respondents), and the respondents themselves that the decree and sale in the suit instituted in 1920 were collusive. While rejecting the argument, this Court observed: (*Nagubai Ammal case*[2], AIR pp. 599-600, para 18)

> "*18.* An admission is not conclusive as to the truth of the matters stated therein. It is only a piece of evidence, the weight to be attached to which must depend on the circumstances under which it is made. It can g be shown to be erroneous or untrue, so long as the person to whom it was made has not acted upon it to his detriment, when it might become conclusive by way of estoppel.
>
> In the present case, there is no question of estoppel, as the title of Dr. Nanjunda Rao arose under a purchase which was long prior to the h

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[2] *Nagubai Ammal* v. *B. Shama Rao*, AIR 1956 SC 593 : 1956 SCR 451

[12] *Collector of Bombay* v. *Nusserwanji Rattanji Mistri*, AIR 1955 SC 298

> admissions made in 1932 and in the subsequent years. It is argued for the appellants that these admissions at the least shifted the burden on to the a plaintiff of proving that the proceedings were not collusive, and that as he gave no evidence worth the name that these statements were made under a mistake or for a purpose and were, in fact, not true, full effect must be given to them.
>
> Reliance was placed on the well-known observations of Baron Parke in *Slatterie* v. *Pooley*[13] (M&W at p. 669; ER at p. 581), that 'what a party b himself admits to be true may reasonably be presumed to be so', and on the decision in *Rani Chandra Kunwar* v. *Chaudhri Narpat Singh*[14] where this statement of the law was adopted. No exception can be taken to this proposition. But before it can be invoked, it must be shown that there is a clear and unambiguous statement by the opponent, such as will be conclusive unless explained.
>
> c It has been already pointed out that the tenor of the statements made by Abdul Huq, his legal representatives and the plaintiff was to suggest that the proceedings in OS No. 100 of 1919-1920 were fraudulent and not collusive in character. Those statements would not, in our opinion, be sufficient, without more, to sustain a finding that the proceedings were collusive."

d **48.** In *Anurag Misra case*[3] the learned Single Judge of the Allahabad High Court held that vague allegations about the ownership of the premises made by the tenant in his written statement filed in a suit for eviction cannot be treated as admission about the contract of tenancy with the plaintiff landlord and the tenant cannot be estopped from subsequently disputing the relationship of landlord and tenant by pleading that somebody else is the e owner of the premises in question.

49. In neither of the aforementioned cases, this Court or the Allahabad High Court considered whether unequivocal admission made by a party in a contemporaneous litigation can be ignored on the ground of the so-called defect in verification. That apart, as we have already found, verification of f the written statement filed on behalf of Appellant 2 in Special Civil Suit No. 313 of 1978/A was in conformity with Order 6 Rule 15 of the Code of Civil Procedure and the High Court rightly relied upon the same for holding that existence of public access to the beach through Survey No. 803 (new No. 246/2) cannot be doubted.

50. The appellants' attempt to confuse the existence of access to the g beach from Points A to B in Survey No. 803 with the so-called access running alongside the nallah deserves to be discarded because no such case was projected before the High Court and no argument was advanced on that score. It is also worth mentioning that in his letter dated 1-12-1978 the Sarpanch of the Gram Panchayat had made a specific mention of public

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h [13] (1840) 6 M&W 664 : 151 ER 579

[14] (1906-07) 34 IA 27

[3] *Anurag Misra* v. *Ravindra Singh*, AIR 1994 All 174

footpath which runs on Survey No. 787 and forms the boundary of Survey No. 803 and the parking area which was shown as situated on the north-east corner of Survey No. 787 adjacent to Survey No. 803. There is no mention in *a* any of the documents of the so-called access alongside the nallah dividing Survey No. 803 (new No. 246/2) on the one hand and Survey Nos. 804 and 805 on the other hand.

51. Once it is held that there existed public access to the beach through Survey No. 803 (new No. 246/2) before its acquisition by the State Government in 1980, the appellants are duty-bound to act in accordance with *b* Clause 4(*ix*) of the agreement, which has the force of law by virtue of Section 42 of the 1894 Act. That clause casts a duty on Appellant 1 to maintain access to the beach without obstruction of any kind whatsoever. The argument of Shri Anil Divan and Shri Pallav Shishodia, learned Senior Counsel appearing for the appellants and the State of Goa respectively, that the Court may relieve the appellants of the obligation to maintain access to *c* the beach through Survey No. 803 (new No. 246/2) because an alternative access has been provided by constructing road, parking area and public footpath, in furtherance of the permission accorded by the Gram Panchayat for construction of hotel in Survey No. 787, cannot be accepted for the simple reason that the agreement was executed between the President of India and Appellant 1 in the backdrop of acquisition of Survey Nos. 803 (new *d* No. 246/2) and 804 (new No. 245/2), and Survey No. 787 on which the hotel was constructed has nothing to do with the acquisition proceedings. Therefore, the alternative road, parking and public footpath provided by Appellant 1 in lieu of the access available through Survey No. 787 cannot be made basis for depriving members of the public of their age-old right to go to the beach through Survey No. 803 (new No. 246/2).

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52. The matter deserves to be considered from another angle. The public trust doctrine which has been invoked by Ms Indira Jaising in support of her argument that the beach in question is a public beach and the appellants cannot privatise the same by blocking/obstructing traditional access available through Survey No. 803 (new No. 246/2) is implicitly engrafted by the State Government in Clause 4(*ix*) of the agreement. That doctrine primarily rests *f* on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. These resources are gift of nature, therefore, they should be freely available to everyone irrespective of one's status in life.

53. The public trust doctrine enjoins upon the Government to protect the *g* resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. This doctrine puts an implicit embargo on the right of the State to transfer public properties to private party if such transfer affects public interest, mandates affirmative State action for effective management of natural resources and empowers the citizens to question ineffective management thereof.

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54. The heart of the public trust doctrine is that it imposes limits and obligations upon government agencies and their administrators on behalf of all the people and especially future generations. For example, renewable and non-renewable resources, associated uses, ecological values or objects in *a* which the public has a special interest (i.e. public lands, waters, etc.) are held subject to the duty of the State not to impair such resources, uses or values, even if private interests are involved. The same obligations apply to managers of forests, monuments, parks, the public domain and other public assets. Professor Joseph L. Sax in his classic article, "The Public Trust Doctrine in Natural Resources Law: Effective Judicial Intervention" (1970), indicates *b* that the public trust doctrine, of all concepts known to law, constitutes the best practical and philosophical premise and legal tool for protecting public rights and for protecting and managing resources, ecological values or objects held in trust.

55. The public trust doctrine is a tool for exerting long-established public rights over short-term public rights and private gain. Today every person *c* exercising his or her right to use the air, water, or land and associated natural ecosystems has the obligation to secure for the rest of us the right to live or otherwise use that same resource or property for the long-term and enjoyment by future generations. To say it another way, a landowner or lessee and a water right holder has an obligation to use such resources in a manner as not to impair or diminish the people's rights and the people's long-term *d* interest in that property or resource, including down slope lands, waters and resources.

56. In *Illinois Central Railroad Co.* v. *People of the State of Illinois*[15] the United States Supreme Court considered whether the State could abdicate its general control over the submerged land. In the year 1869, the Illinois Legislature made a substantial grant of submerged land—a mile strip along the shores of Lake Michigan extending one mile out from the shoreline—to *e* the Illinois Central Railroad. This was repealed in 1869. The State of Illinois sued to quit title. The Supreme Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre-emption and sale. It was a title held in trust— *f* for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public.

g **57.** In *Robbins* v. *Deptt. of Public Works*[16] the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, "wetlands of considerable natural beauty ... often used for nature study and recreation" for highway use.

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[15] 36 L Ed 1018 : 146 US 387 (1892)

[16] 244 NE 2d 577

58. In *National Audubon Society* v. *Superior Court of Alpine County*[17] the Supreme Court of California considered whether a permit can be granted to the Department of Water and Power of the city of Los Angeles to appropriate water of four of the five streams flowing into Mono Lake, which is the second largest lake in California. Some environmentalists, using the public trust doctrine, brought law suit against Los Angeles Water Diversions. The Supreme Court of California explained the concept of public trust doctrine in the following words:

> " 'By the law of nature these things are common to mankind — the air, running water, the sea and consequently the shores of the sea.' (*Institutes of Justinian 2.1.1*) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns 'all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people'."

While dealing with the State's power as a trustee of public property, the Court observed:

> "Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust...."

The Court recorded its conclusion in the following words:

> "The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (See Johnson[18]; Robie, *Some Reflections on Environmental Considerations in Water Rights Administration*[19]; Comment, *National Audubon Society* v. *Deptt. of Water and Power*[20].) As a matter of practical necessity the State may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see *United Plainsmen* v. *N.D. State Water Cons. Commission*[21] NW at pp. 462-63), and to preserve, so far as consistent with the public interest, the uses protected by the trust."

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[17] 33 Cal 3d 419 (1983)

[18] 14 UC Davis L Rev 233 at pp. 256-57

[19] (1972) 2 Ecology LQ 695 at pp. 710-11

[20] (1982) 33 Hastings LJ 653 at p. 654

[21] 247 NW 2d 457 (ND 1976)

59. The Indian society has, since time immemorial, been conscious of the necessity of protecting environment and ecology. The main motto of social a life has been "to live in harmony with nature". Sages and saints of India lived in forests. Their preachings contained in vedas, upanishadas, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. It was regarded as a sacred duty of everyone to protect them. In those days, people worshipped trees, rivers and sea which were treated as belonging to all living creatures. The children were educated by b their parents and grandparents about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life.

60. The Constitution of India, which was enforced on 26-1-1950 did not contain any provision obligating the State to protect environment and ecology, but the people continued to treat it as their social duty to respect the c nature, natural resources and protect environment and ecology. After almost three decades of independence, the legislature recognised the importance of protecting and improving environment and safeguarding forests and wildlife and Article 48-A was inserted in Part IV of the Constitution by the Constitution (Forty-second Amendment) Act, 1976 whereby a duty was imposed on the State to "endeavour to protect and improve the environment d and safeguard forests and wildlife of the country". By the same amendment Article 51-A was inserted in the form of Part IV-A which enumerates fundamental duties of every citizen. Article 51-A(*g*) declares that it shall be the duty of every citizen of India

> "to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures".

e Thereafter, the courts repeatedly invoked Articles 48-A and 51-A for protecting environment and ecology and several orders were passed in public interest litigation mandating the State to take action for protecting forests, rivers and anti-pollution measures.

61. The importance of the public trust doctrine was also recognised by this Court and the same was applied for protecting natural resources which f have been treated as public properties and are held by the Government as trustee of the people.

62. In *M.C. Mehta* v. *Kamal Nath*[22] this Court considered whether a private company running tourist resort in Kullu-Manali Valley could block the flow of Beas River and create a new channel to divert the river to at least 1 kilometre downstream. After adverting to the theoretical and philosophical g basis of the public trust doctrine and some judgments on the subject, this Court observed: (SCC p. 413, para 35)

> "*35.* We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under h the pressures of the changing needs of an increasingly complex society,

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[22] (1997) 1 SCC 388

> find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made *a* by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the *b* natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."

63. In *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*[23] the Court applied public trust doctrine for upholding the order of the Allahabad High Court *c* which quashed the decision of Lucknow Nagar Mahapalika permitting appellant, M.I. Builders (P) Ltd. to construct an underground shopping complex in Jhandewala Park, Aminabad Market, Lucknow, and directed demolition of the construction made on the park land. The High Court noted that Lucknow Nagar Mahapalika had entered into an agreement with the appellant for construction of shopping complex and given it full freedom to *d* lease out the shops and also to sign agreement on its behalf and held that this was impermissible. On appeal by the builders, this Court held that the terms of agreement were unreasonable, unfair and atrocious. The Court then invoked the public trust doctrine and held that being a trustee of the park on behalf of the public, the Nagar Mahapalika could not have transferred the same to the private builder and thereby deprived the residents of the area of *e* the quality of life to which they were entitled under the Constitution and municipal laws.

64. In *Intellectuals Forum* v. *State of A.P.*[24] this Court again invoked the public trust doctrine in a matter involving the challenge to the systematic destruction of percolation, irrigation and drinking water tanks in Tirupati Town, referred to some judicial precedents including *M.C. Mehta* v. *Kamal* *f* *Nath*[22], *M.I. Builders (P) Ltd.*[23], *National Audubon Society*[17], and observed: (*Intellectuals Forum case*[24], SCC p. 575, para 76)

> "*76.* … This is an articulation of the doctrine from the angle of the affirmative duties of the State with regard to public trust. Formulated from a negatory angle, the doctrine does not exactly *prohibit* the *g* alienation of the property held as a public trust. However, when the State holds a resource that is freely available for the use of the public, it provides for a high degree of judicial scrutiny on any action of the

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[23] (1999) 6 SCC 464

[24] (2006) 3 SCC 549 *h*

[22] (1997) 1 SCC 388

[17] *National Audubon Society* v. *Superior Court of Alpine County*, 33 Cal 3d 419 (1983)

> Government, no matter how consistent with the existing legislations, that attempts to restrict such free use. To properly scrutinise such actions of the Government, the courts must make a distinction between the Government's general obligation to act for the public benefit, and the special, more demanding obligation which it may have as a trustee of certain public resources [Joseph L. Sax, 'The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention', *Michigan Law Review*, Vol. 68, No. 3 (January 1970) pp. 471-566]. According to Prof. Sax, whose article on this subject is considered to be an authority, three types of restrictions on governmental authority are often thought to be imposed by the public trust doctrine [ibid]:
>
> > *1.* the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;
> >
> > *2.* the property may not be sold, even for fair cash equivalent;
> >
> > *3.* the property must be maintained for particular types of use (*i*) either traditional uses, or (*ii*) some uses particular to that form of resources." (emphasis in original)

The Court then held that the government orders are violative of Principles 1 to 3, mentioned in the article of Professor Joseph L. Sax and directed that no further construction be made in Peruru and Avilala Tanks and corrective measures be taken for recharging them.

65. We reiterate that natural resources including forests, water bodies, rivers, seashores, etc. are held by the State as a trustee on behalf of the people and especially the future generations. These constitute common properties and people are entitled to uninterrupted use thereof. The State cannot transfer public trust properties to a private party, if such a transfer interferes with the right of the public and the court can invoke the public trust doctrine and take affirmative action for protecting the right of people to have access to light, air and water and also for protecting rivers, sea, tanks, trees, forests and associated natural ecosystems.

66. As a sequel to the above discussion, we hold that Clause 4(*ix*) of the agreement is binding on the appellants and Appellant 1 is under a statutory obligation to maintain access/road to the beach through Survey No. 803 (new No. 246/2) without any obstruction of any kind and the High Court did not commit any error by issuing a mandamus in that regard.

Re: 3

67. Section 16 of the 1894 Act which constitutes the foundation of the arguments of the appellants and the State that public access to the beach, if any available, through Survey No. 803 (new No. 246/2) stood extinguished with the vesting of land in the State Government, reads as under:

> "16. *Power to take possession.*—When the Collector has made an award under Section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances."

68. The argument of Shri Anil Divan, learned Senior Counsel appearing for the appellants is that even though access to the beach may have been available through Survey No. 803 before its acquisition and the general a public may have been using the same as of right for going to the beach, the said right got terminated as soon as possession of the land was taken by the Government. His further argument is that public access to the beach through Survey No. 803 was in the nature of encumbrance on the land which stood extinguished on vesting of the land in the Government in terms of Section 16 of the 1894 Act. Shri Pallav Shishodia, learned Senior Counsel appearing for b the State adopted this argument and emphatically submitted that access to the beach available to the public through Survey No. 803 (new No. 246/2) before its acquisition was obliterated once the acquired land vested in the Government.

69. Although, no exception can be taken to the appellants coming forward with such an argument despite the fact that in terms of Clause 4(*ix*) c of the agreement which has, by virtue of Section 42 of the 1894 Act, the force of law, they are required to maintain public access to the beach, we are quite surprised with the stance adopted by the State Government. Admittedly, the agreement was executed by Appellant 1 under Section 41 of the 1894 Act in the backdrop of acquisition of Survey No. 803 (new No. 246/2) and Survey No. 804 (new No. 245/2). It is also not in dispute that in terms of d Clause 4(*ix*), Appellant 1 is required to maintain access to the beach without any obstruction. This shows that despite Section 16 of the 1894 Act, the parties had consciously decided to protect the traditional right of the members of public to go to the beach by using the existing pathway through the acquired land. Both, the appellants and the State functionaries knew that there exists public access to the beach through Survey No. 803 (new No. e 246/2), that members of public were using the same since time immemorial and that it was necessary to protect that right. Therefore, it is not possible to find any fault with the view taken by the High Court that access to the beach is not an encumbrance and in any case, the traditional pathway available to the public for going to the beach through Survey No. 803 (new No. 246/2) cannot be treated as having been extinguished in the face of specific f provision contained in the agreement which is statutory in character.

70. In *Collector of Bombay* v. *Nusserwanji Rattanji Mistri*[12], a Bench of three Judges considered whether right of the State to levy assessment on the land can be treated to have been extinguished in view of Section 16 of the 1894 Act. The Court answered the question in the negative and observed: (AIR p. 305, para 13) g

> "*13.* … Under Section 16, when the Collector makes an award 'he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrance'. The word 'encumbrance' in this section can only mean interests in respect of which a compensation

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[12] AIR 1955 SC 298

> was made under Section 11, or could have been claimed. It cannot include the right of the Government to levy assessment on the lands."

a **71.** In *State of H.P.* v. *Tarsem Singh*[25], a two-Judge Bench interpreted Section 3 of the H.P. Village Common Lands Vesting and Utilisation Act, 1973 and held that the common right of grazing available to the people of the area stood extinguished with the vesting of land in the State. The respondents who were residents of the village brought a suit in representative capacity for declaration that the land in dispute is being used for grazing cattle, cutting b fuel wood and for other common purposes and the defendant cannot interfere with their easementary right to enjoy the land. The trial court decreed the suit. The appeal preferred by the State was substantially dismissed by the first appellate court. The High Court dismissed the second appeal and held that easementary right of grazing cannot be treated to have vested in the State under Section 3. This Court reversed the judgment of the High Court and c dismissed the suit. After noticing the non obstante clause used in Section 3(1) of the Act, the Court held that all interests, title and rights in the land vested in the Gram Panchayat stood extinguished and came to be vested in the State free from all encumbrances including the easementary right. In the course of the judgment, the two-Judge Bench referred to the judgments of the Allahabad and Calcutta High Courts wherein it was held that the word d "encumbrance" means burden or charge upon property for a claim or lien upon State or land and it would include easementary right over the land.

72. The last-mentioned judgment was considered by another Bench of two Judges in *H.P. SEB* v. *Shiv K. Sharma*[26]. The facts of that case were that the appellant Board purchased 10.10 bighas out of the holding of one Rikhi Ram. The sale deed specifically mentioned that Respondents 1 to 3 shall have e access to their land from the land of the seller. Thereafter, the State Government acquired an area of 41.06 bighas of land for construction of 60 kW sub-station. The acquired land included the remaining land of Rikhi Ram from whom Respondents 1 to 3 had purchased the land. After acquisition, the entire property was fenced off by barbed wire and electric sub-station and living quarters of the employees of the appellant were also constructed f thereupon. In the process, the appellant blocked off the passage being used as access to the land of the respondents. Respondents 1 to 3 unsuccessfully sued the appellant Board for mandatory injunction to remove the barbed wire fence blocking access to their land. On appeal, the learned District Judge reversed the judgment of the trial court and decreed the suit. The High Court confirmed the appellate judgment.

g **73.** Before this Court in *Shiv K. Sharma case*[26], reliance was placed on the judgment in *Tarsem Singh case*[25] and it was argued that even if Respondents 1 to 3 had a right of way by easement over the land of Rikhi Ram, the said land having been acquired stood vested in the State Government under Section 16 absolutely free from all encumbrances

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[25] (2001) 8 SCC 104
[26] (2005) 2 SCC 164

including such easementary right. The High Court drew a distinction between easement of an ordinary nature in respect of which compensation could have been claimed in the land acquisition proceedings and an easement of necessity like a right of passage and held that such right was not extinguished by reason of acquisition. For this purpose, the High Court relied on the observations made in *Nusserwanji Rattanji Mistri case*[12]. While confirming the High Court's verdict, the two-Judge Bench observed: (*Shiv K. Sharma case*[26], SCC p. 167, paras 10-11)

> "*10.* This judgment of *Collector of Bombay*[12] was a judgment by a Bench of three learned Judges of this Court. Learned counsel for the appellants drew our attention to the judgment in *State of H.P.*[25] rendered by a Bench of two learned Judges and contended that this judgment clearly holds that the phrase 'free from all encumbrances' used in Section 16 of the Act is wholly unqualified and would include in its compass every right including an easementary right which affects the land. He particularly drew our attention to para 10 of the judgment where the Court took the view: (*Tarsem Singh case*[25], SCC p. 109)
>
> > '*10.* … all rights, title and interests including the easementary rights stood extinguished and all such rights, title and interests vested in the State free from all encumbrances.'
>
> *11.* In the first place, it is difficult for us to read the judgment in *Tarsem Singh case*[25] as taking a view contrary to and differing from the law laid down by a larger Bench in *Collector of Bombay*[12]. Secondly, we notice that the decision in *Tarsem Singh*[25] is not in respect of an easementary right arising out of necessity. There does not seem to be any discussion on the said aspect of the matter in this judgment. The view taken in *Collector of Bombay*[12] therefore, appears to hold the field, particularly where the nature of easementary right claimed is not capable of being evaluated in terms of compensation and arises out of sheer necessity."

74. By applying the ratio of the judgments in *Nusserwanji Rattanji Mistri case*[12] and *H.P. SEB case*[26] to the facts of this case, we hold that when the State volunteered to take possession of the land subject to the right of the members of public to access the beach through the acquired land and a specific provision to that effect was incorporated in the agreement executed under Section 41(5), Section 16 of the 1894 Act cannot be invoked for nullifying the right of the public to access the beach through Survey No. 803 (new No. 246/2).

75. We also do not find any substance in the argument of Shri Anil Divan that the Court should not insist on continuance of public access to the beach through Survey No. 803 (new No. 246/2) because the pathway going to Dona-Paola-Bambolim Road which was available through Survey No. 792

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[12] *Collector of Bombay* v. *Nusserwanji Rattanji Mistri*, AIR 1955 SC 298

[26] *H.P. SEB* v. *Shiv K. Sharma*, (2005) 2 SCC 164

[25] *State of H.P.* v. *Tarsem Singh*, (2001) 8 SCC 104

(new No. 242/1) (Machado's Cove) does not exist any more. The premise on which Shri Divan has made this argument, namely, non-availability of a pathway through Survey No. 792 does not find support from the record of these appeals. Therefore, it is neither proper nor justified for this Court to deny the people of their traditional right of access to the beach through Survey No. 803 (new No. 246/2) which goes to Dona-Paola-Bambolim Road by using the roads provided in Survey No. 792 (new No. 242/1) (Machado's Cove).

b ***Re: 4***

76. For deciding this question, we shall have to again advert to the factual matrix of the case. Appellant 2 purchased Survey Nos. 787 and 805 from Dr. Alvaro Remiojo Binto and leased out the same to Appellant 1. The latter obtained permission from the Gram Panchayat for constructing hotel building in Survey No. 787. The construction commenced in 1978 and was completed c in May 1983. Alongside construction of the hotel building, Appellant 1 approached the State Government for acquisition of land in various survey numbers including Survey Nos. 803 and 804 (new Nos. 246/2 and 245/2).

77. In Para 3 of the application addressed to Shri Shankar Laad, Minister of Revenue, Government of Goa, Appellant 1 gave out that in the first phase of the project hotel building was proposed to be constructed in Survey No. d 787 and in the second phase, yoga centre, health club and water sports facilities were proposed to be put up in Survey No. 805 for promoting tourism. In Para 5, Appellant 1 offered justification for acquisition of Survey Nos. 788 and 789 which abut the beach. In Para 6, Appellant 1 pointed out that for second phase of the hotel complex, it would be desirable to acquire Survey Nos. 803 and 804 which will make the entire area one composite unit. e It is thus evident that at the time of making application to the State Government for acquisition of land, Appellant 1 did not have any proposal for construction and/or extension of hotel building in Survey No. 803.

78. The State Government initiated acquisition proceedings by issuing Notification dated 29-10-1980 under Section 4(1) of the 1894 Act, which f were finalised in 1983. After the Government took possession of the acquired land, Appellant 1 entered into an agreement as per the requirement of Section 41. Clauses 3, 4(*ii*), (*iv*), (*v*) and (*vii*) of the agreement enumerate affirmative actions required to be taken by Appellant 1 for achieving the object of acquisition, whereas Clauses 4(*i*), (*vi*), (*viii*) and (*ix*) contain various negative covenants including the one against the use of land for any purpose other g than for which it was acquired. A conjoint reading of these clauses unmistakably shows that Appellant 1 was to use the acquired land only in furtherance of and for the purpose for which it was acquired, namely, creation of sports and other recreational facilities/amenities and to maintain the same in good order and condition and was not to use the land for any other purpose.

h **79.** The first part of Clause 4(*viii*) contains an express embargo against construction of any building or structure on the acquired land by Appellant 1.

The second part of that clause envisages that prior approval of EDC of the Government of Goa will be obtained before undertaking activities for its development, besides other statutory requirements under the existing laws. The management of Appellant 1 was very much aware of the embargo contained in first part of Clause 4(*viii*) against construction of any building or structure on the acquired land and this is the reason why in the application made by Smt Anju Timblo to the Development Authority under Section 44(1) read with Section 49 of the Town and Country Planning Act for grant of permission for extension of the existing hotel building, Survey No. 246/2 was not mentioned. EEC and EDC considered that application and approved extension of the existing hotel building on land in Survey Nos. 246/1, 246/3 and 246/4 (old Nos. 787, 788 and 789) subject, of course, to the condition of maintaining pedestrian path. The order issued by the Development Authority on 15-4-1988 was also for extension of the existing hotel building on land bearing Survey Nos. 246/1, 3 and 4.

80. Neither in the minutes of EEC or EDC nor in the order issued by the Development Authority under Section 44(3)(*c*) read with Section 49(2) of the Town and Country Planning Act, there was any mention of Survey No. 246/2. This shows that till that stage, Appellant 1 had consciously refrained from putting up even a proposal for constructing any building or structure on the acquired land. For the first time a request to that effect was made in the garb of making an application for renewal of permission granted by order dated 15-4-1988 with a deviation. A mention of four sub-divisions of Survey No. 246 (1, 2, 3 and 4) was made instead of three sub-divisions i.e. 1, 3 and 4.

81. With a view to avoid scrutiny by EEC and EDC, the appellants managed consideration of the application for extension and deviation of hotel building by the Board constituted under Section 4 of the Town and Country Planning Act. The Board considered and approved extension/deviation albeit in violation of the negative covenant contained in the first part of Clause 4(*viii*) of the statutory agreement. While doing that, the Board was fully cognizant of the fact that in view of Clause 4(*viii*), Appellant 1 cannot use the land for constructing any structure and also that even for undertaking any activity relating to development, approval of EDC will be necessary. That is why the State Government forwarded the decision of the Board to the Development Authority for its consideration. Unfortunately, the Development Authority without even bringing the matter to the notice of EDC, passed order dated 20-4-1992 and permitted Appellant 1 to carry out construction on plot bearing Survey No. 246/2.

82. In our considered view, neither the State Government nor the Board could allow extension of the hotel building on the acquired land in violation of the first part of Clause 4(*viii*) of the agreement dated 26-10-1983 which, at the cost of repetition, we would like to emphasise, has the force of law by virtue of Section 42 of the 1894 Act.

83. Section 8 of the Town and Country Planning Act, which enumerates functions and powers of the Board reads as under:

> "8. *Functions and powers of Board*.—(1) Subject to the provisions of this Act and the Rules made thereunder, the functions of the Board shall be to guide, direct and assist the Planning and Development Authorities, to advise the Government in matters relating to the planning, development and use of rural and urban land in the Union Territory, and to perform such other functions as the Government may, from time to time, assign to the Board.
>
> (2) In particular, and without prejudice to the generality of the foregoing provisions, the Board may, and shall if required by the Government so to do—
>
> (*a*) direct the preparation of development plans by the Planning and Development Authorities;
>
> (*b*) undertake, assist and encourage the collection, maintenance and publication of statistics, bulletins and monographs on planning and its methodology;
>
> (*c*) coordinate and advise on the planning and implementation of physical development programmes within the Union Territory;
>
> (*d*) prepare and furnish reports relating to the working of this Act; and
>
> (*e*) perform such other functions as are incidental, supplemental or consequential to any of the functions aforesaid or which may be prescribed.
>
> (3) The Board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act."

A reading of the above reproduced section makes it clear that the Board is required to guide, direct and assist the Planning and Development Authorities; to advise the Government in matters relating to the planning, development and use of rural and urban land in the Union Territory; and to perform other functions assigned to it by the Government.

84. In terms of Section 8(2), the Board can direct the preparation of development plans by the Planning and Development Authorities; undertake, assist and encourage the collection, maintenance and publication of statistics, bulletins and monographs on planning and its methodology; coordinate and advise on the planning and implementation of physical development programmes and perform such other functions which are incidental to the enumerated functions.

85. The role of the State Government primarily relates to approval of regional plan (Section 44), revision of regional plan (Section 17), declaration of planning areas, their amalgamation, sub-divisions, etc. (Section 18), power to withdraw planning area from operation of the Act (Section 19) and constitution of the Planning and Development Authorities for the planning area (Section 20). Section 22, which enumerates functions and powers of the Planning and Development Authorities reads as under:

> "22. *Functions and powers of Planning and Development Authorities*.—Subject to the provisions of this Act and the Rules framed thereunder and

> subject to any directions which the Government may give, the functions of every Planning and Development Authority shall be—
>
> (*a*) to prepare an existing land use map; a
>
> (*b*) to prepare an outline development plan;
>
> (*c*) to prepare a comprehensive development plan;
>
> (*d*) to prepare and prescribe uses of land within its area; and
>
> (*e*) to prepare schemes of development and undertake their implementation,
>
> and for these purposes, it may carry out or cause to be carried out, surveys of b the planning area and prepare report or reports of such surveys, and to perform such other functions as may be prescribed."

86. Chapter VII of the Town and Country Planning Act contains provisions relating to control of development and use of land. Section 44 lays down that any person intending to carry out any development in respect of, or change of use of, any land, shall make an application in writing to the c Planning and Development Authority for permission in such form containing such particulars and accompanied by such documents and plans as may be prescribed. Sections 44(2)(*b*) and (*c*) deal with the situation in which the Development Authority objects to the proposal for development, in which case the matter has to be placed before the Government for its decision. Section 44(3) lays down that the Development Authority can grant d permission, conditionally or unconditionally for carrying out any development or change of use of the land. While doing so, the Development Authority is required to take note of the provisions of the development plan, if any, in force, relevant bye-laws, regulations, etc.

87. None of the abovenoted provisions of the Town and Country Planning Act empowers the Board and/or the Development Authority to e modify, amend, alter or change an agreement entered into as per the requirement of Section 41 of the 1894 Act or allow violation thereof by the Company. Therefore, the decision taken by the Board in its meeting held on 20-6-1991 and order dated 20-4-1992 issued by the Development Authority were non est and the High Court rightly did not give any credence to those decisions while adjudicating the issue relating to legality of the construction f made on Survey No. 803 (new No. 246/2).

88. We are also of the opinion that even EDC which was empowered under the second part of Clause 4(*viii*) of the agreement to grant approval to the activities relating to development could not have permitted construction/extension of the hotel building on a portion of Survey No. 803 (new No. 246/2). Any such decision by EDC would also have been declared a g nullity on the ground of violation of the mandate of the first part of Clause 4(*viii*) of the statutory agreement.

89. The argument of Shri Divan is that extension of the hotel building on 1000 sq m of Survey No. 803 (new No. 246/2) falls within the definition of "development" contained in Section 2(10) of the Town and Country Planning h Act which comprehends carrying out of building activities and, therefore, the

High Court should not have ordered demolition of the extended portion of the hotel, but we are unable to agree with him and reiterate that neither the Board *a* nor the Development Authority could sanction violation of agreement dated 26-10-1983.

90. For the reasons stated above, we hold that the High Court did not commit any error by declaring that extension of the hotel building on 1000 sq m of Survey No. 803 (new No. 246/2) is illegal and directed its demolition after following the procedure prescribed under Clause 6 of the agreement *b* dated 26-10-1983.

Re: 5

91. This question deserves to be answered in favour of the appellants. A reading of the application dated 15-11-1978 made by Appellant 1 makes it clear that it had no intention of making available the facilities of yoga centre, *c* health club and amenities like water sports to the general public. Rather, in Para 6 of its application, Appellant 1 made it clear that the facilities provided by the hotel will be open for use by non-residents also on membership basis. Agreement dated 26-10-1983 is totally silent on the issue of making the facilities created by the appellants open for public use without permission and payment of fees. Therefore, it is not possible to agree with Ms Jaising *d* that the facilities and amenities created by the appellant should be made available to the general public free of cost.

92. In the result, the appeals are dismissed. Since execution of most of the directions given by the High Court remained stayed during the pendency of these appeals, we deem it proper to issue the following directions:

e (*i*) The appellants are allowed three months' time to demolish the extended portion of the hotel building which was constructed on 1000 sq m of Survey No. 803 (new No. 246/2) and, thereafter report the matter to the Development Authority which shall, in turn, submit a report to that effect to the Goa Bench of the Bombay High Court.

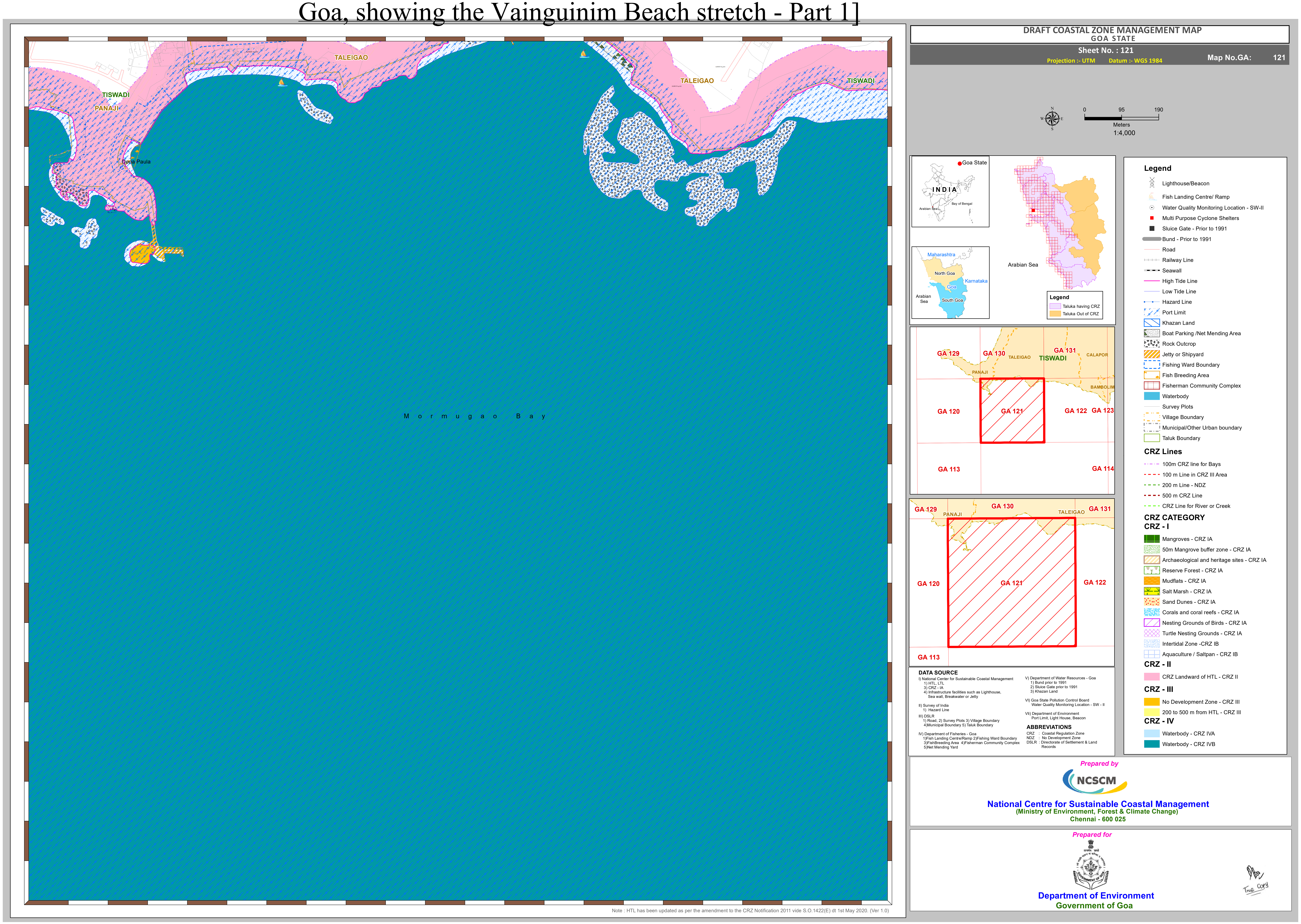
(*ii*) If the appellants fail to demolish the building and report the *f* matter to the Development Authority within the time specified in Direction (*i*) above, the authority concerned shall take action in accordance with paras (*a*) and (*b*) of the operative part of the High Court's order.

(*iii*) The access shown in the plan, Ext. A attached to Writ Petition No. 141 of 1992 shall be kept open without any obstruction of any kind *g* from Points A to B in order to come from Machado's Cove and then go to the beach beyond Point B. If during pendency of the litigation, Appellant 1 has put up any obstruction or made construction to block or hinder access to the beach through Survey No. 803 (new No. 246/2), then the same shall be removed within one month from today.

h

[Extract of the final approved CZMP for the State of Goa, showing the Vainguinim Beach stretch - Part 1]

ANNEXURE 3


TALEIGAO
TISWADI
PANAJI
TALEIGAO
TISWADI
Dona Paula
M o r m u g a o   B a y
N
W
E
S
0
95
190
Meters
Goa State
INDIA
Arabian Sea
Bay of Bengal
Maharashtra
North Goa
Karnataka
Goa
Arabian Sea
South Goa
Arabian Sea
Legend
Taluka having CRZ
Taluka Out of CRZ
GA 129
GA 130
TALEIGAO
GA 131
TISWADI
CALAPOR
PANAJI
BAMBOLIM
GA 120
GA 121
GA 122
GA 123
GA 113
GA 114
GA 129
GA 130
PANAJI
TALEIGAO
GA 131
GA 120
GA 121
GA 122
GA 113

DRAFT COASTAL ZONE MANAGEMENT MAP
GOA STATE

Sheet No. : 121
Projection :- UTM   Datum :- WGS 1984
Map No.GA: 121

1:4,000

Legend

- Lighthouse/Beacon
- Fish Landing Centre/ Ramp
- Water Quality Monitoring Location - SW-II
- Multi Purpose Cyclone Shelters
- Sluice Gate - Prior to 1991
- Bund - Prior to 1991
- Road
- Railway Line
- Seawall
- High Tide Line
- Low Tide Line
- Hazard Line
- Port Limit
- Khazan Land
- Boat Parking /Net Mending Area
- Rock Outcrop
- Jetty or Shipyard
- Fishing Ward Boundary
- Fish Breeding Area
- Fisherman Community Complex
- Waterbody
- Survey Plots
- Village Boundary
- Municipal/Other Urban boundary
- Taluk Boundary

CRZ Lines

- 100m CRZ line for Bays
- 100 m Line in CRZ III Area
- 200 m Line - NDZ
- 500 m CRZ Line
- CRZ Line for River or Creek

CRZ CATEGORY

CRZ - I

- Mangroves - CRZ IA
- 50m Mangrove buffer zone - CRZ IA
- Archaeological and heritage sites - CRZ IA
- Reserve Forest - CRZ IA
- Mudflats - CRZ IA
- Salt Marsh - CRZ IA
- Sand Dunes - CRZ IA
- Corals and coral reefs - CRZ IA
- Nesting Grounds of Birds - CRZ IA
- Turtle Nesting Grounds - CRZ IA
- Intertidal Zone -CRZ IB
- Aquaculture / Saltpan - CRZ IB

CRZ - II

- CRZ Landward of HTL - CRZ II

CRZ - III

- No Development Zone - CRZ III
- 200 to 500 m from HTL - CRZ III

CRZ - IV

- Waterbody - CRZ IVA
- Waterbody - CRZ IVB

DATA SOURCE

I) National Center for Sustainable Coastal Management
  1) HTL, LTL
  3) CRZ - IA
  4) Infrastructure facilities such as Lighthouse, Sea wall, Breakwater or Jetty

II) Survey of India
  1) Hazard Line

III) DSLR
  1) Road, 2) Survey Plots 3) Village Boundary
  4)Municipal Boundary 5) Taluk Boundary

IV) Department of Fisheries - Goa
  1)Fish Landing Centre/Ramp 2)Fishing Ward Boundary
  3)FishBreeding Area 4)Fisherman Community Complex
  5)Net Mending Yard

V) Department of Water Resources - Goa
  1) Bund prior to 1991
  2) Sluice Gate prior to 1991
  3) Khazan Land

VI) Goa State Pollution Control Board
  Water Quality Monitoring Location - SW - II

VIi) Department of Environment
  Port Limit, Light House, Beacon

ABBREVIATIONS

CRZ : Coastal Regulation Zone
NDZ : No Development Zone
DSLR : Directorate of Settlement & Land Records

Prepared by

NCSCM

National Centre for Sustainable Coastal Management
(Ministry of Environment, Forest & Climate Change)
Chennai - 600 025

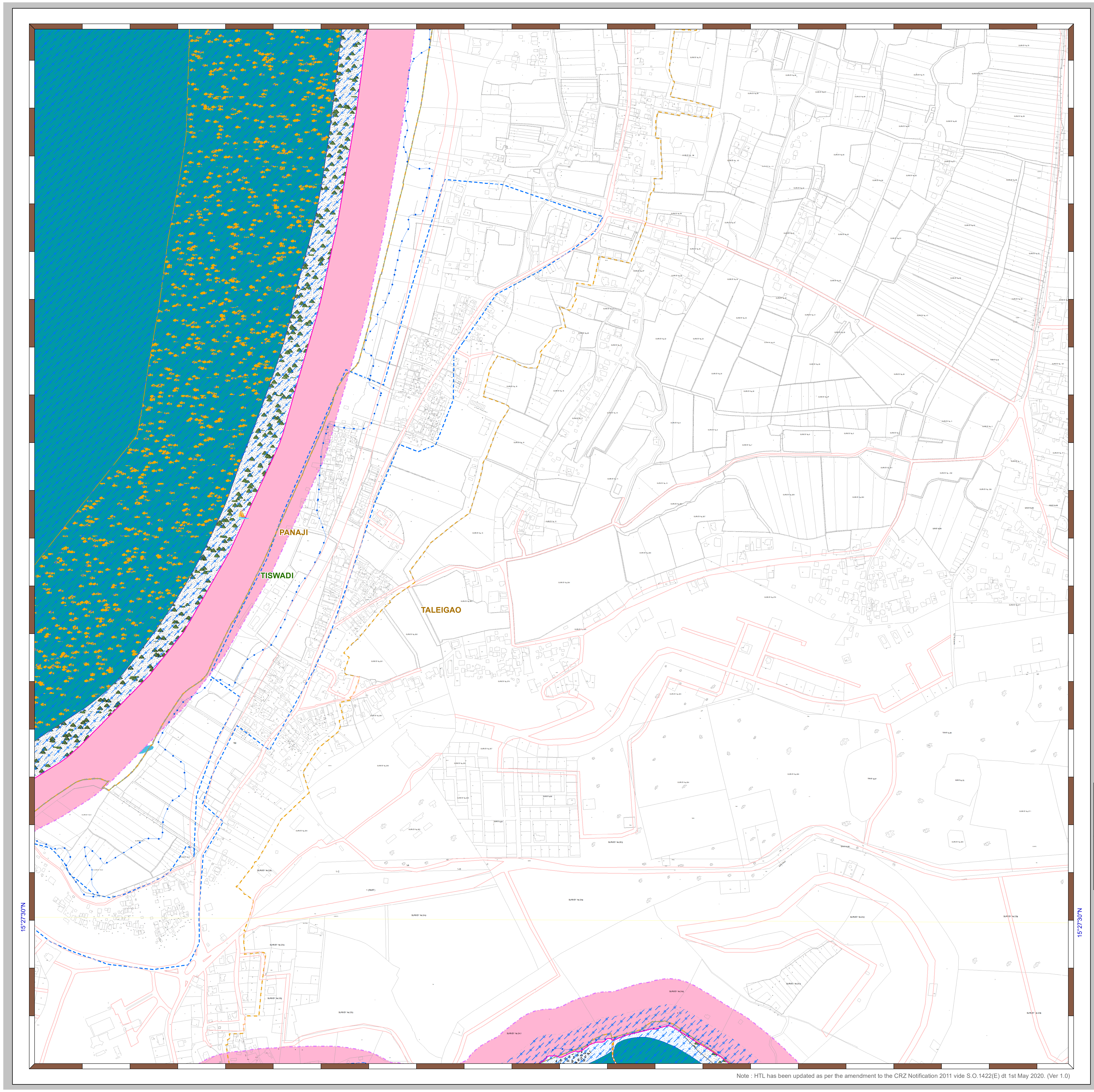
Prepared for

Department of Environment
Government of Goa

True Copy

Note : HTL has been updated as per the amendment to the CRZ Notification 2011 vide S.O.1422(E) dt 1st May 2020. (Ver 1.0)

[Extract of the final approved CZMP for the State of Goa, showing the Vainguinim Beach stretch - Part 2]

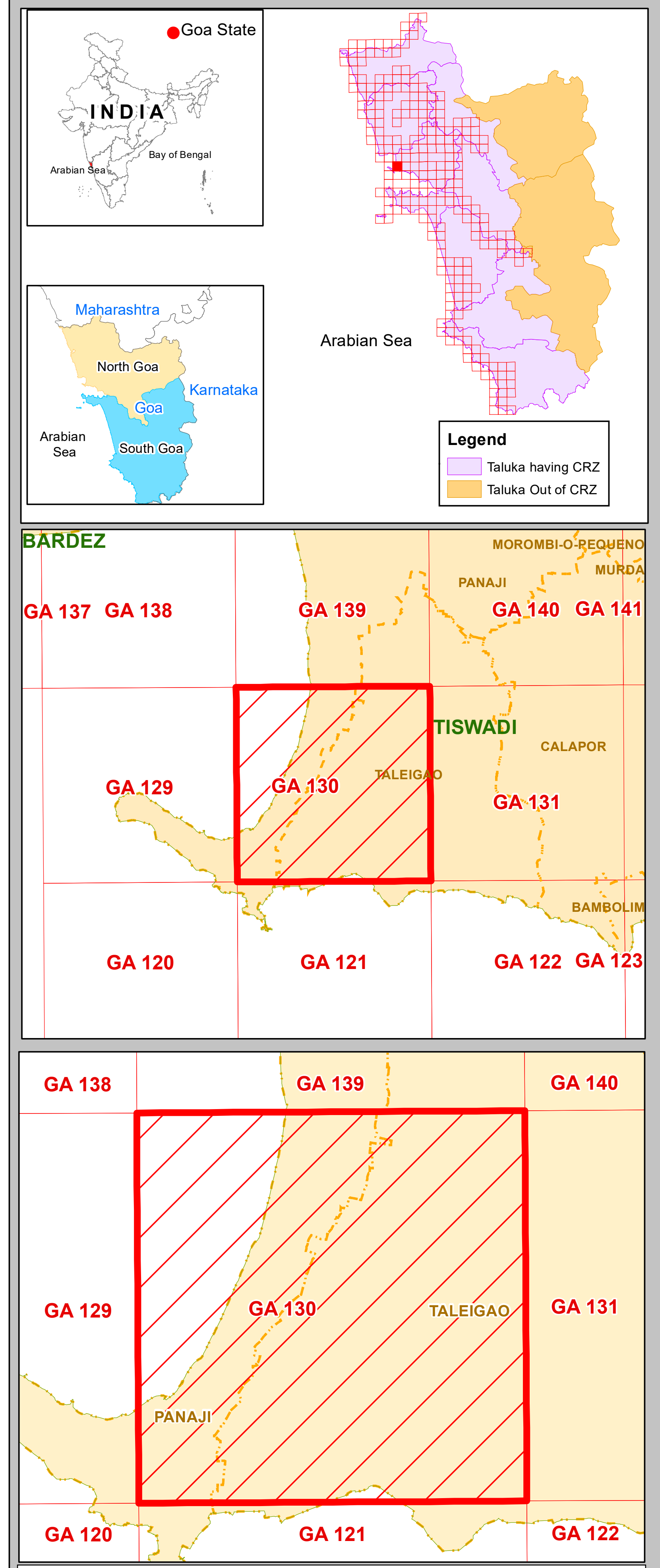

PANAJI
TISWADI
TALEIGAO
15°27'30"N
15°27'30"N

Note : HTL has been updated as per the amendment to the CRZ Notification 2011 vide S.O.1422(E) dt 1st May 2020. (Ver 1.0)

DRAFT COASTAL ZONE MANAGEMENT MAP
GOA STATE

Sheet No. : 130
Projection :- UTM Datum :- WGS 1984
Map No.GA: 130

0 95 190
Meters
1:4,000


Goa State
INDIA
Arabian Sea
Bay of Bengal
Maharashtra
North Goa
Goa
Karnataka
South Goa
Arabian Sea
Arabian Sea
Legend
Taluka having CRZ
Taluka Out of CRZ
BARDEZ
MOROMBI-O-PEQUENO
MURDA
PANAJI
GA 137
GA 138
GA 139
GA 140
GA 141
TISWADI
CALAPOR
TALEIGAO
GA 129
GA 130
GA 131
BAMBOLIM
GA 120
GA 121
GA 122
GA 123
GA 138
GA 139
GA 140
GA 129
GA 130
TALEIGAO
GA 131
PANAJI
GA 120
GA 121
GA 122

Legend

- Lighthouse/Beacon
- Fish Landing Centre/ Ramp
- Water Quality Monitoring Location - SW-II
- Multi Purpose Cyclone Shelters
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- Bund - Prior to 1991
- Road
- Railway Line
- Seawall
- High Tide Line
- Low Tide Line
- Hazard Line
- Port Limit
- Khazan Land
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- Rock Outcrop
- Jetty or Shipyard
- Fishing Ward Boundary
- Fish Breeding Area
- Fisherman Community Complex
- Waterbody
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  Water Quality Monitoring Location - SW - II

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  Port Limit, Light House, Beacon

ABBREVIATIONS

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Prepared by

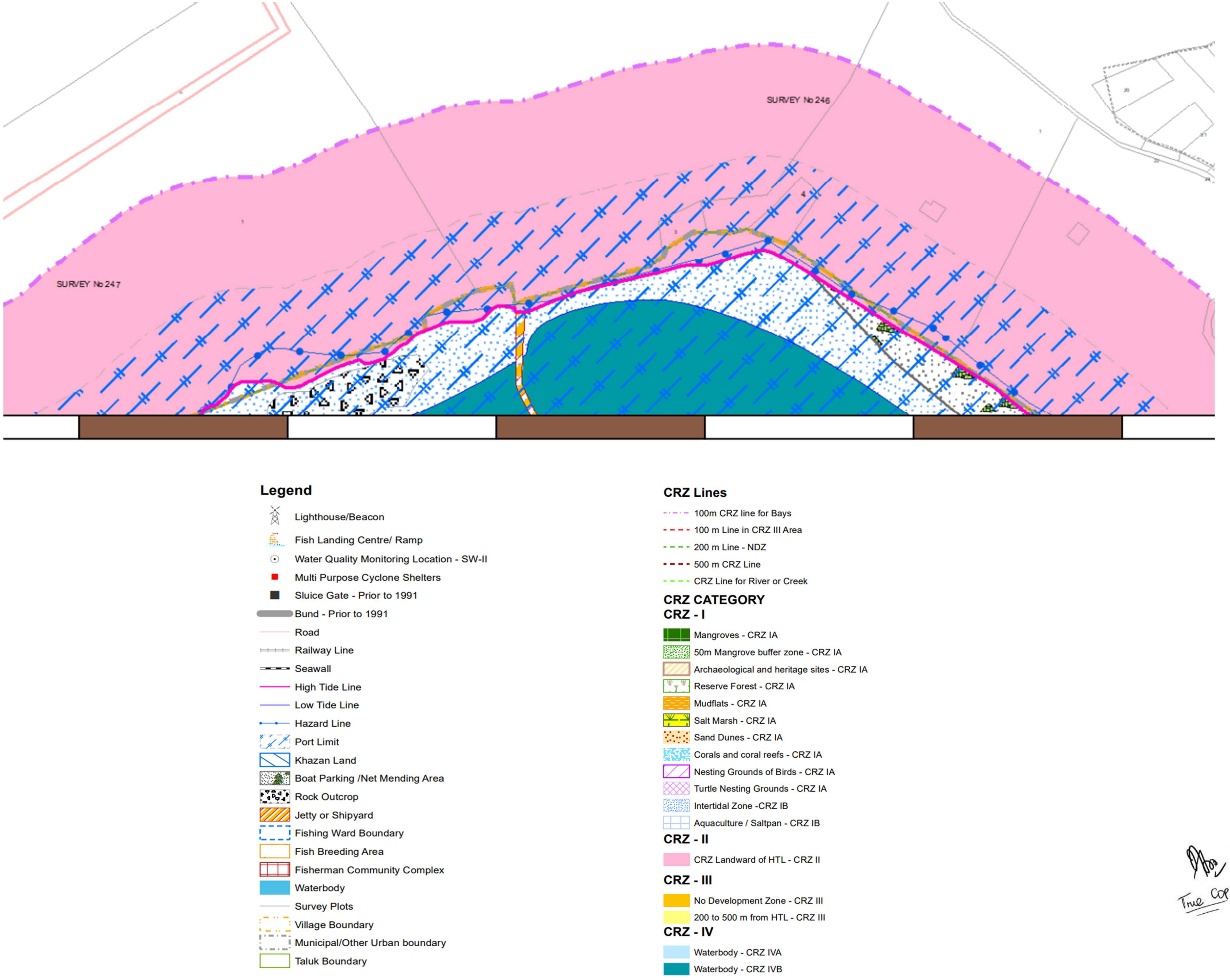
NCSCM
National Centre for Sustainable Coastal Management
(Ministry of Environment, Forest & Climate Change)
Chennai - 600 025

Prepared for

Department of Environment
Government of Goa

True Copy

[Zoomed in extract of CZMP Map on pg. 92]


SURVEY No 246
SURVEY No 247
Legend
Lighthouse/Beacon
Fish Landing Centre/ Ramp
Water Quality Monitoring Location - SW-II
Multi Purpose Cyclone Shelters
Sluice Gate - Prior to 1991
Bund - Prior to 1991
Road
Railway Line
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Intertidal Zone -CRZ IB
Aquaculture / Saltpan - CRZ IB
CRZ - II
CRZ Landward of HTL - CRZ II
CRZ - III
No Development Zone - CRZ III
200 to 500 m from HTL - CRZ III
CRZ - IV
Waterbody - CRZ IVA
Waterbody - CRZ IVB

True Copy

ANNEXURE 4 COLLY

Wed, Apr 21, 5:07 PM

The member secretary,
GCZMA

Dear Sir,

Please explain how Cidade de Goa was permitted to use a bulldozer to tamper with the sandy portions of the Bainguinim beach, which is a public beach?

No doubt the decision was made by the previous CGZMA. However, the present GCZMA may call for the records and ask how the hotel authorities commissioned a JCB to work on the beach sands?

Or is this act of destruction and vandalization of the beach precisely what the GCZMA approved?

Is the GCZMA taking any action in the matter?

Faithfully yours,

Dr Claude Alvares
Director/Goa Foundation

Encl: Picture of JCB in operation.

True Copy

GOA
FOUNDATION

G-8, St Britto's Apartments, Feira Alta, Mapusa 403507 Goa, INDIA
Tel: +91-(0)832-2256479; 2263305 *(also fax)*
E-mail: goafoundation@gmail.com *Website:* www.goafoundation.org

7th June 2021

To:

The Chief Secretary,
Government of Goa,
Secretariat, Porvorim, Goa.

Subj: Destruction of Vainguinim public beach by Fomento Resorts and Indian Hotels Company Ltd

Dear Sir,

I am writing to file a formal complaint with the Goa Government in respect of illegal erection of a cement concrete wall on Vainguinim beach, Dona Paula, by Fomento Resorts (owner of Cidade-de-Goa) and Indian Hotels Company Ltd (its present managers).

The Vainguinim beach is a public beach and this is unanimously recorded in judgements of the Bombay High Court and the Supreme Court of India.

The beach and its conservation therefore are squarely covered by the public trust doctrine which is the law of the land. In fact, both the Bombay High Court and the Supreme Court invoked the public interest doctrine when ensuring public access to the same beach on petitions filed by the Goa Foundation two decades ago.

Since the beach belongs to the public and the government is to look after it as a public trustee, obviously no development authority may grant any permission for any development, or construction, let alone erection of a cement concrete wall right in the middle of the beach without knowledge and consent of the government.

True Copy

It appears that some dubious NOCs were granted by the GCZMA, obviously in collusion with the party. However, the GCZMA is not empowered to grant licenses for repairs, reconstruction or new construction under any law prevailing in the state either on the beach or even in the CRZ. Only the state government, the planning authority and the village panchayat may consider granting approvals and licenses. However, where a public beach is concerned – as we are dealing with a public asset – only actions that are needed to protect the beach and ensure its continued use for the public and for future generations, would be permissible.

The present construction, to the best of our knowledge, does not have the consent of the state government nor the GPPDA nor the VP. The Chief Minister has himself conceded in an electronic interview that the construction does not have the approval of government.

In light of the above, the construction of the wall on a public beach – for which the public has fought several years – is a breach of the public trust doctrine. I am therefore writing to you being the head of the state administration, to take immediate steps to ensure that the wall is forthwith removed and the beach is brought to its original condition.

I am enclosing pictures of the use of a bulldozer on the beach (movement of motorized vehicles on beaches is banned by Collector's orders), construction of the cement concrete wall, and the completed wall which needs to be removed. The public simply wants its beach back in its original condition.

Costs for the above operations would have to be recovered from Fomento and Indian Hotels. State government may also impose penalties.

I look forward to hearing from you in this matter.

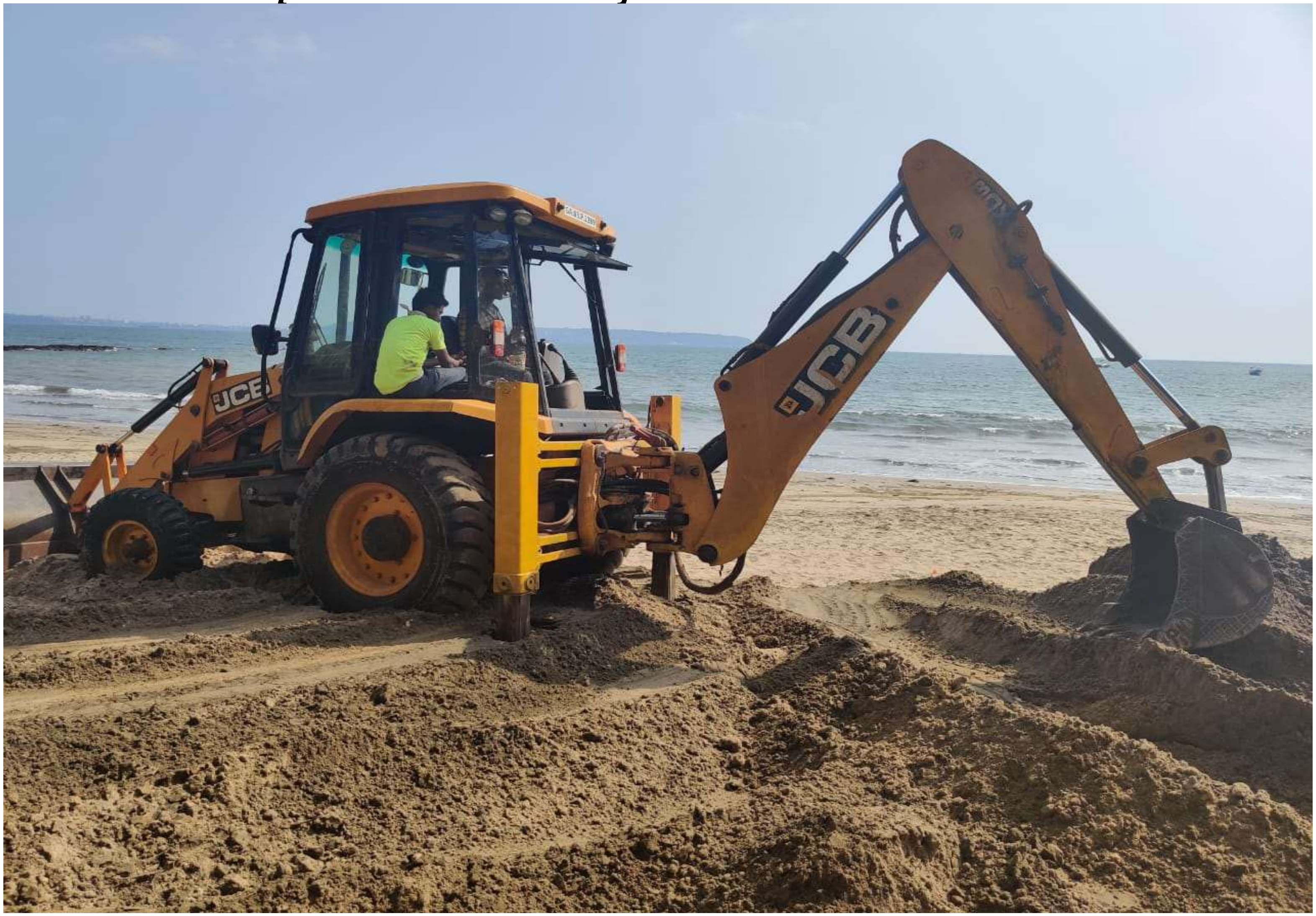
Yours sincerely,

(Dr Claude Alvares)
Director

Attached: as above

ANNEXURE 5 COLLY

Photograph of the embankment construction
while it was underway
[APRIL - MAY 2021]



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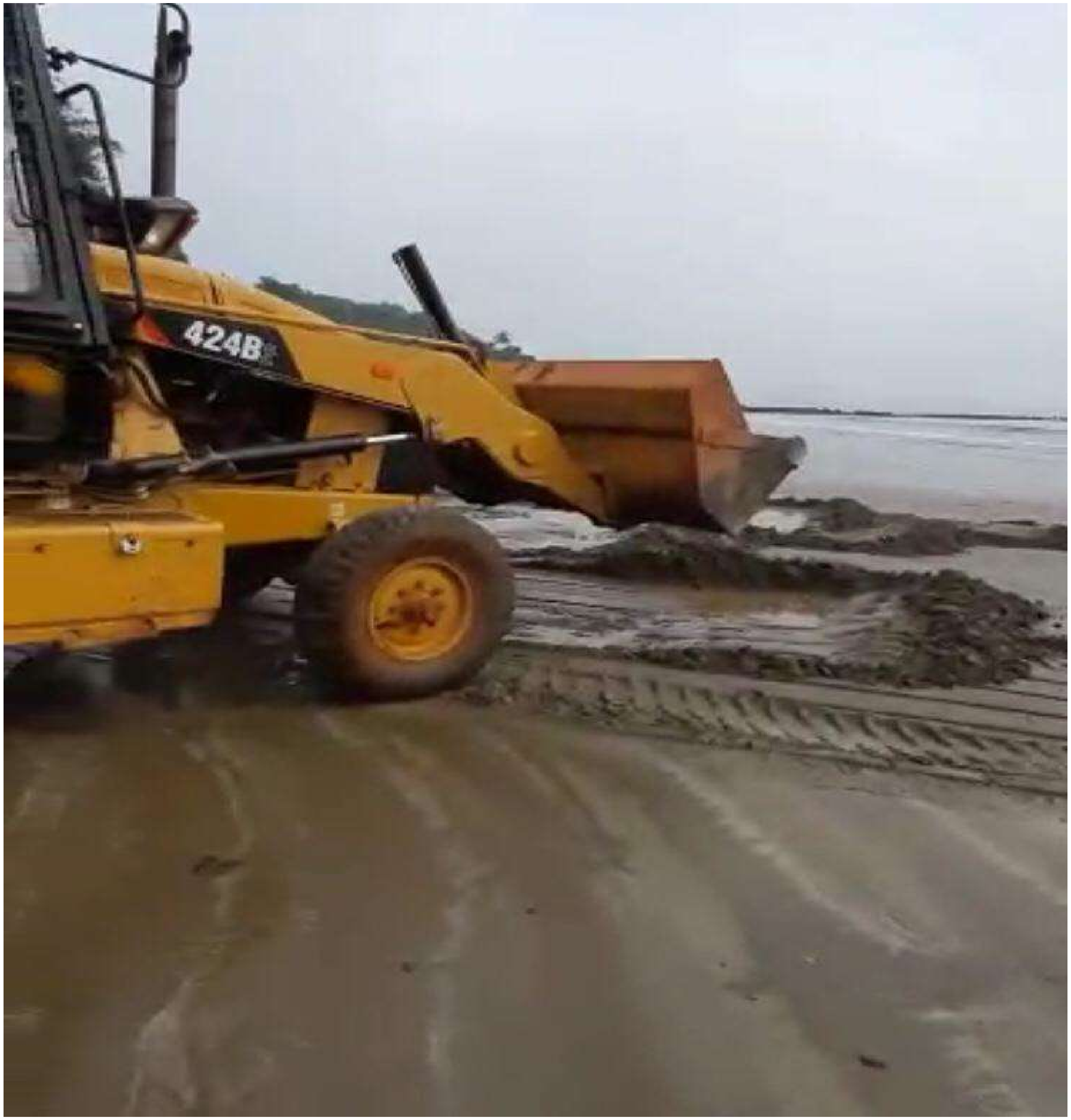
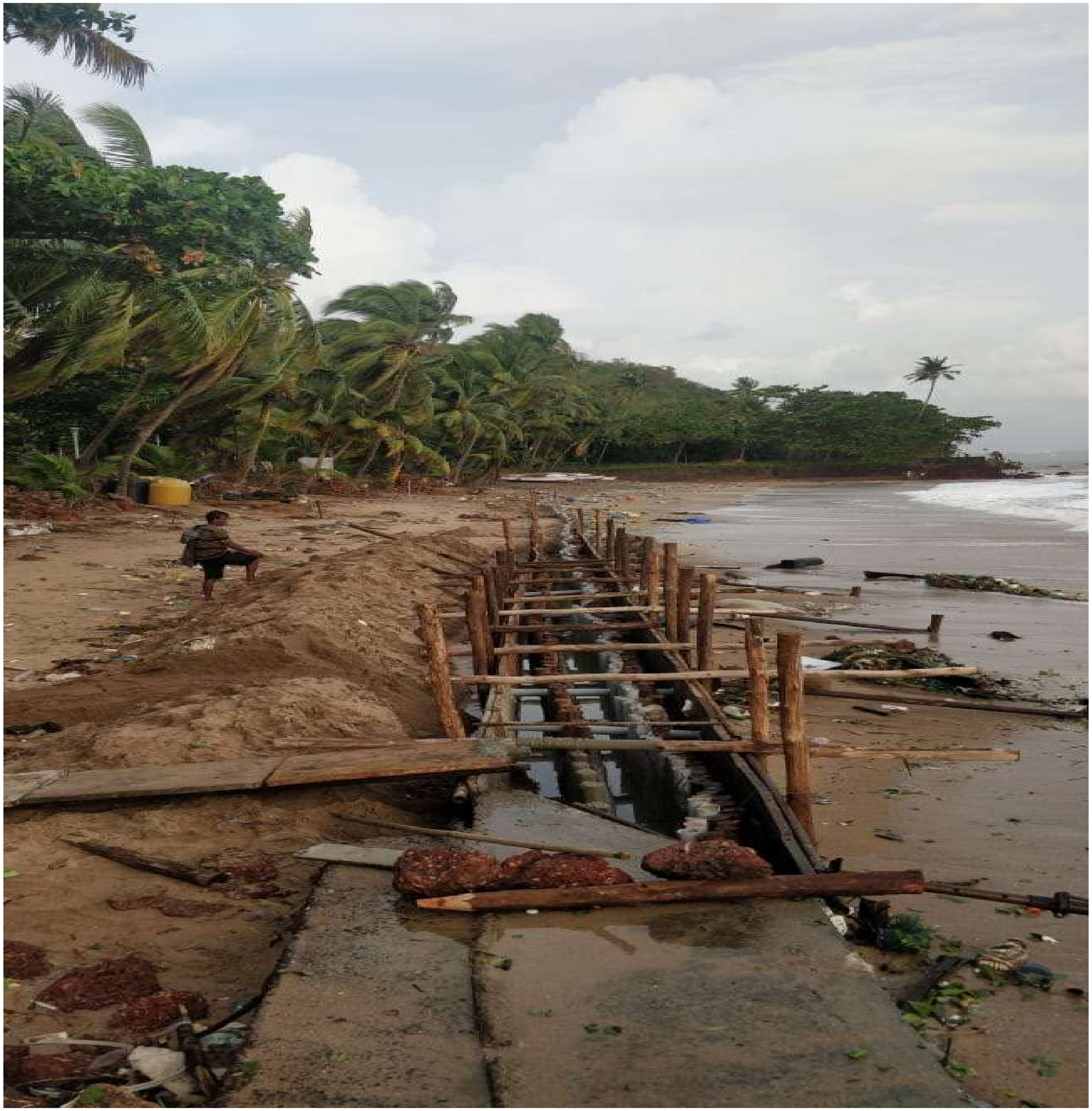
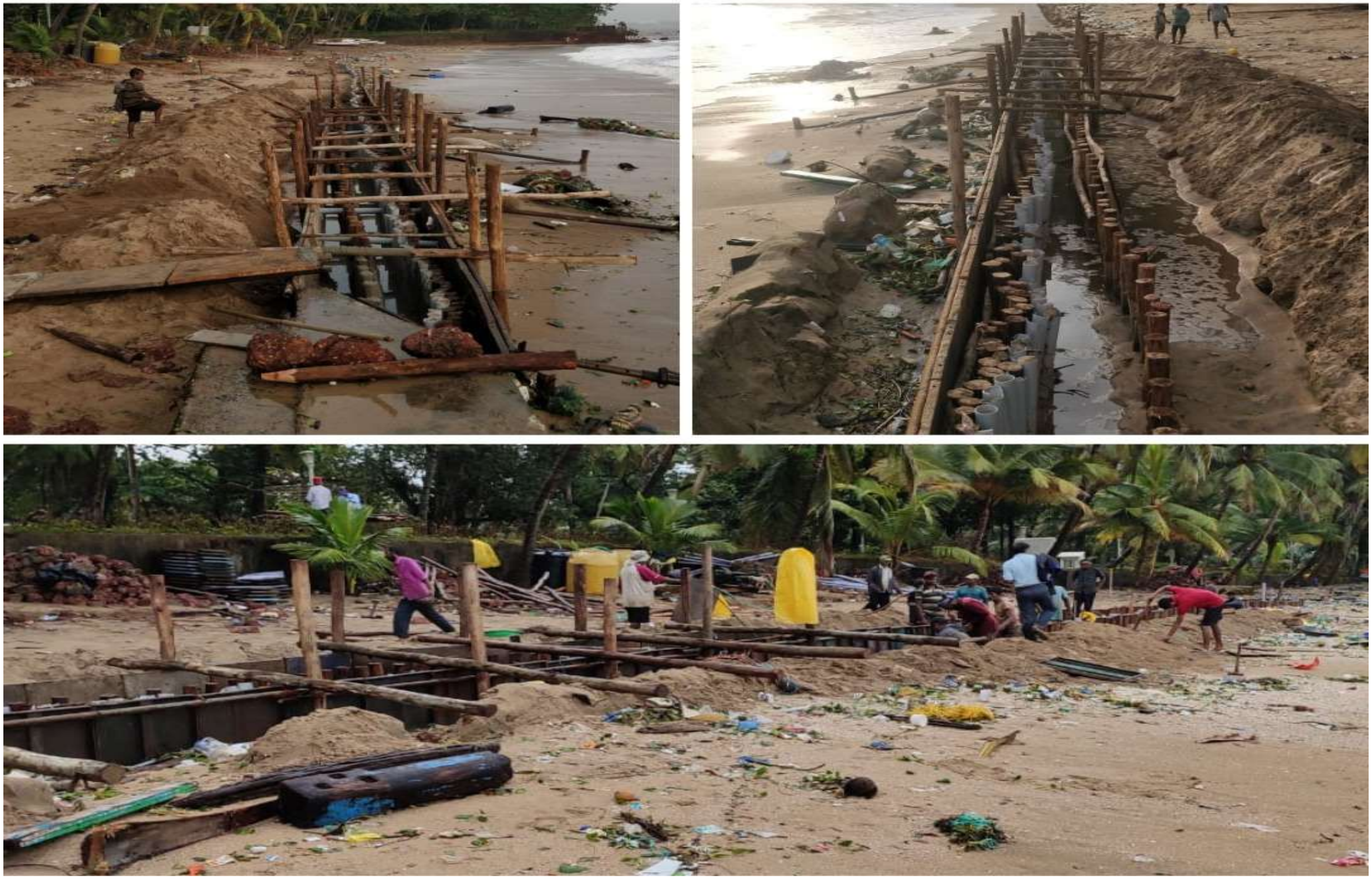

424B

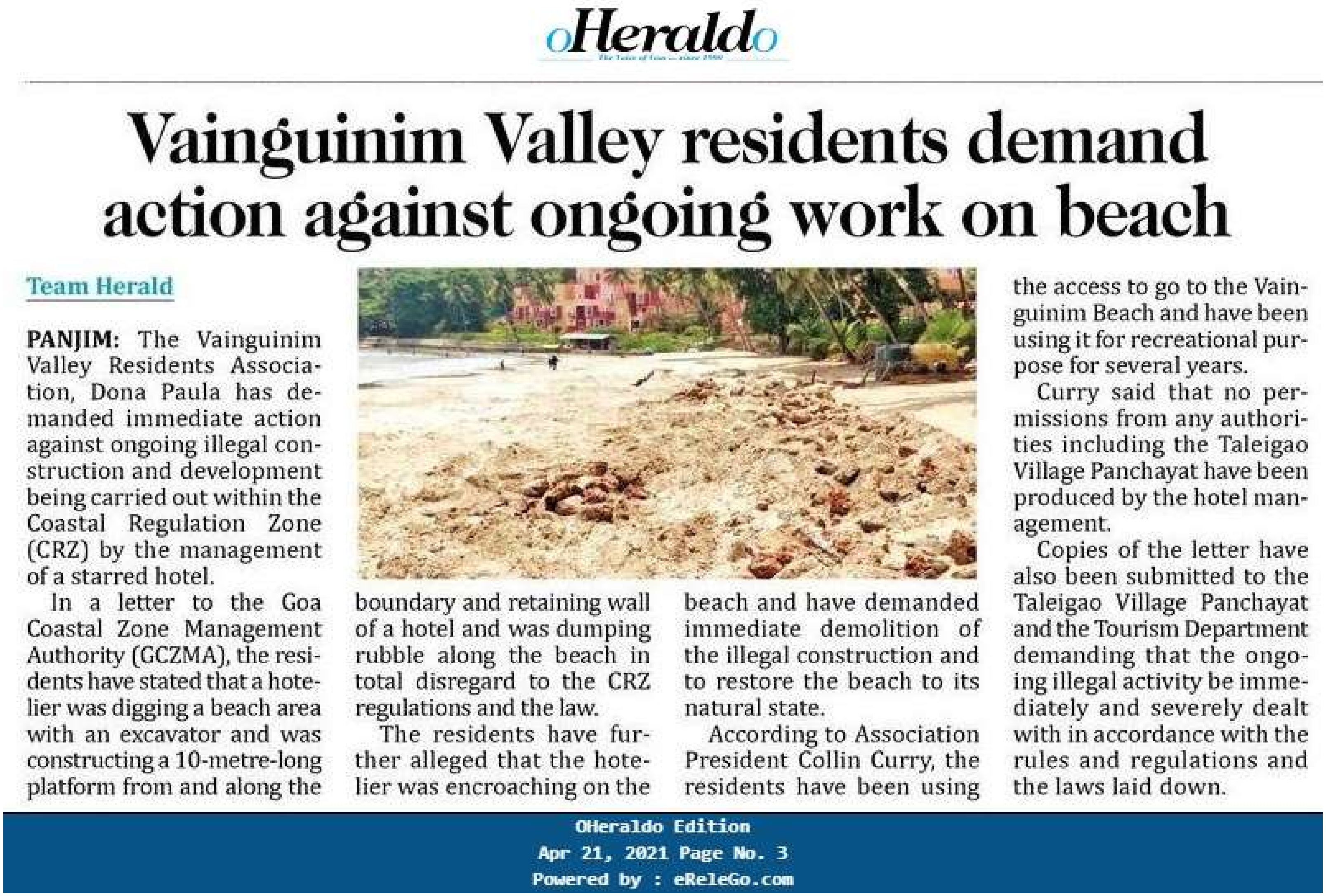
SUNDAY TIMES
PLAY AND PARTY Unlimited
BIG DADDY CASINO
As Covid-19 wreaks havoc, state scrambles to set up health infra
After Beds, It Is Shortage Of Medical Staff
ACTIVE CASES CROSS 6,500-MARK
Use entire nat'l capacity to step up vax prodn, PM tells officials
12.25cr Jabs Given So Far, 1.2cr 2nd Doses
Maoists kill two off-duty cops
Pharma cos cut remdesivir rates
Govt bans O₂ cylinder export, will be diverted to health services
Indian variant found in 50% samp
sent for gene probe from M'rash



ON GROUND REALITY



Report about the construction in the 'Herald' Newspaper dt. 21.04.2021



oHeraldo

Vainguinim Valley residents demand action against ongoing work on beach

Team Herald

PANJIM: The Vainguinim Valley Residents Association, Dona Paula has demanded immediate action against ongoing illegal construction and development being carried out within the Coastal Regulation Zone (CRZ) by the management of a starred hotel.

In a letter to the Goa Coastal Zone Management Authority (GCZMA), the residents have stated that a hotelier was digging a beach area with an excavator and was constructing a 10-metre-long platform from and along the boundary and retaining wall of a hotel and was dumping rubble along the beach in total disregard to the CRZ regulations and the law.

The residents have further alleged that the hotelier was encroaching on the beach and have demanded immediate demolition of the illegal construction and to restore the beach to its natural state.

According to Association President Collin Curry, the residents have been using the access to go to the Vainguinim Beach and have been using it for recreational purpose for several years.

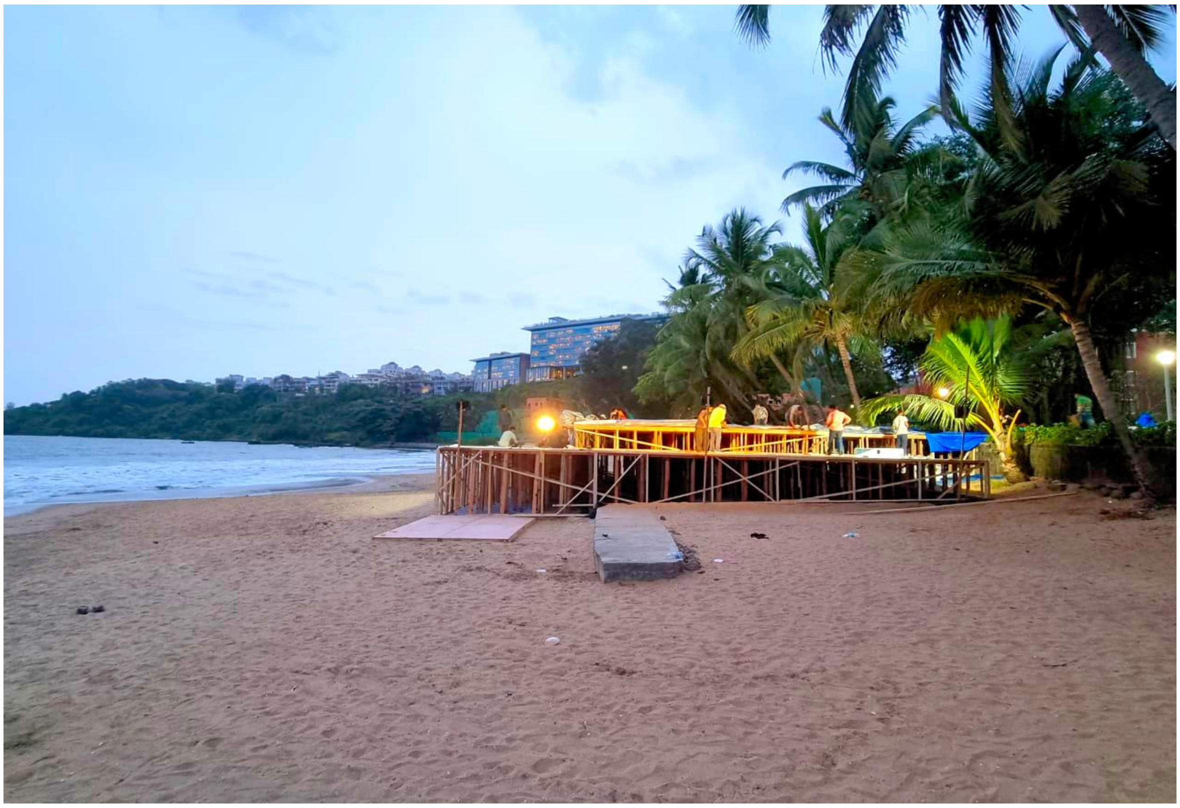
Curry said that no permissions from any authorities including the Taleigao Village Panchayat have been produced by the hotel management.

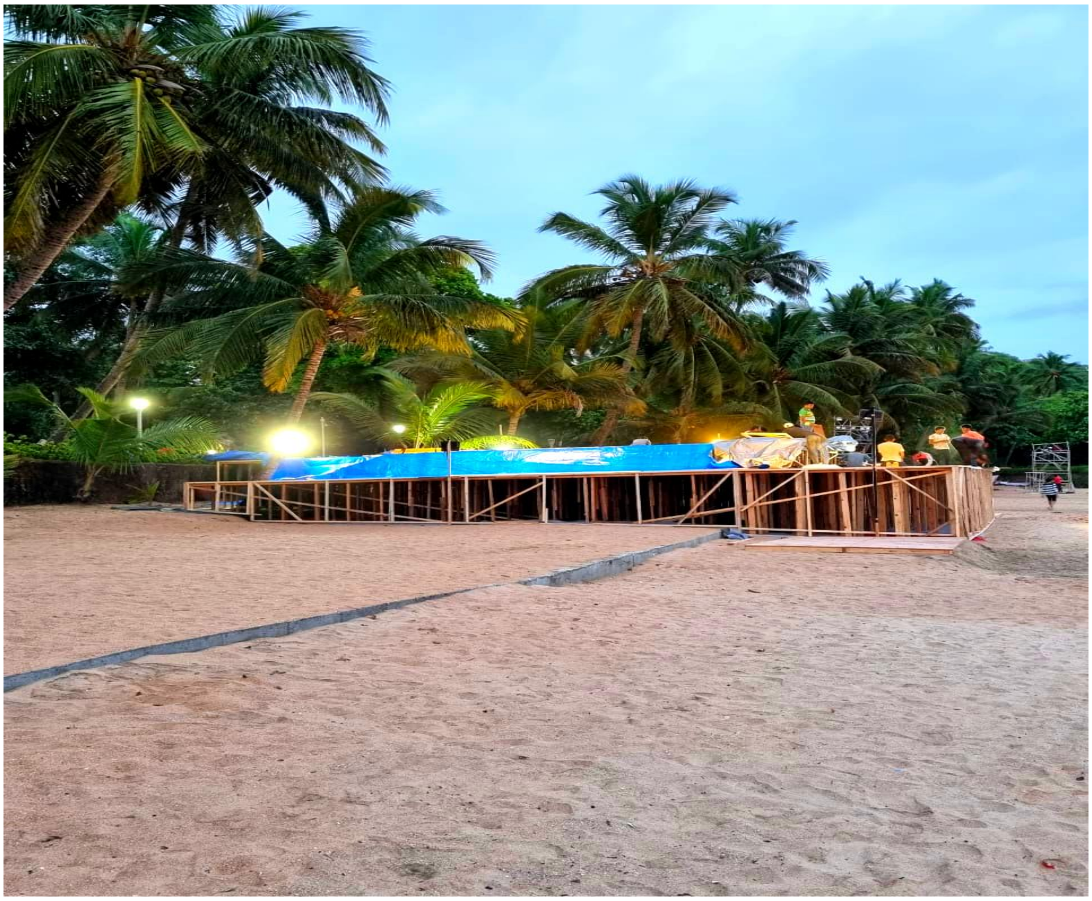
Copies of the letter have also been submitted to the Taleigao Village Panchayat and the Tourism Department demanding that the ongoing illegal activity be immediately and severely dealt with in accordance with the rules and regulations and the laws laid down.

OHeraldo Edition
Apr 21, 2021 Page No. 3
Powered by : eReleGo.com

ANNEXURE 6 COLLY

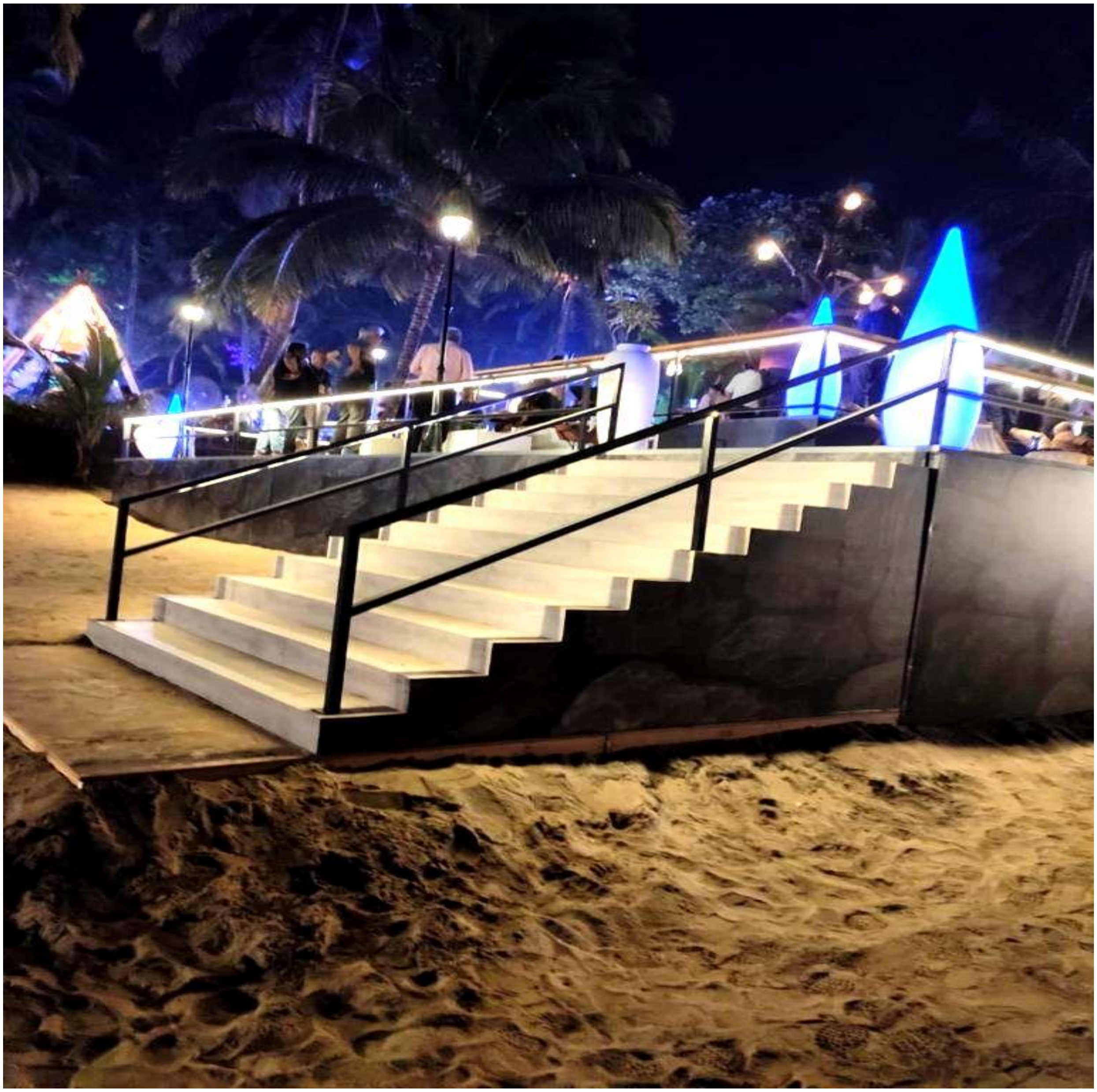
Photographs showing further new structures being put up by the Resp. No. 3, adjoining the concrete structure already erected, dt. 11.05.2022



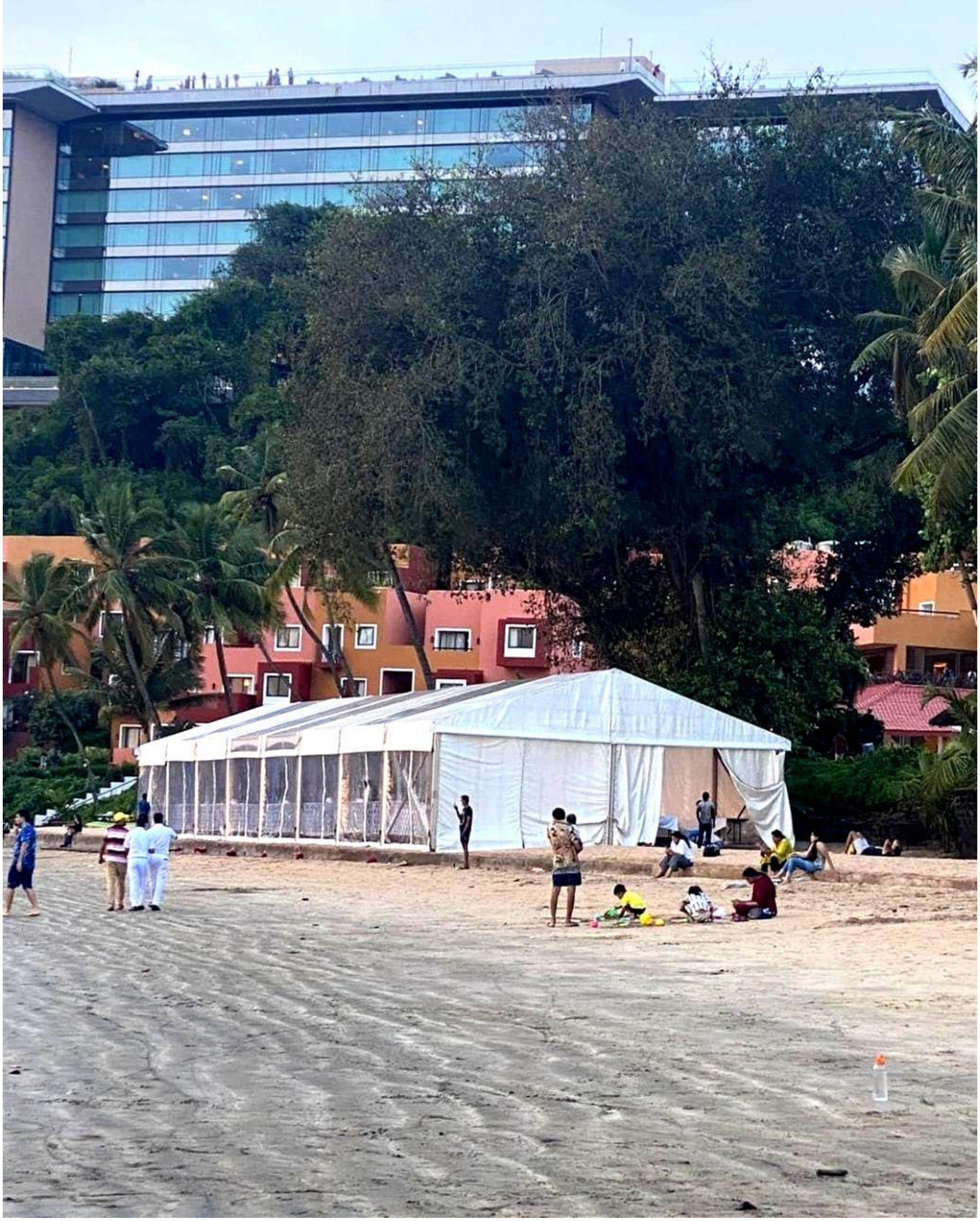


True Copy

Photograph showing completed structure /shack, with steps to the Beach

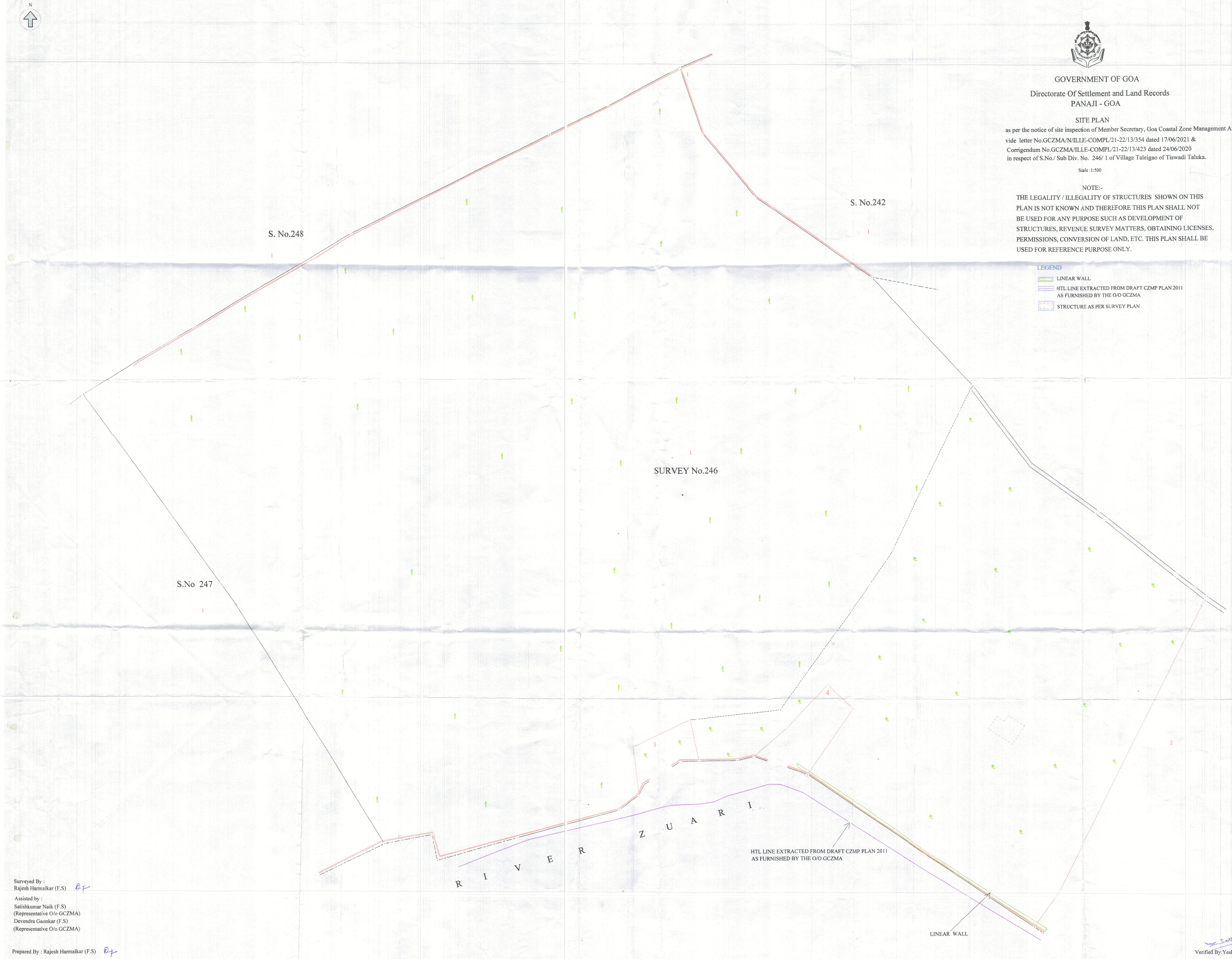


Photograph showing temporary restaurant structure constructed on the Beach, dt. Nov. 2021



ANNEXURE 7

[Map prepared by District Collector/ DSLR- June 2021]


N
S. No.248
S. No.242
SURVEY No.246
S.No 247
RIVER ZUARI
1
2
3
4
HTL LINE EXTRACTED FROM DRAFT CZMP PLAN 2011
AS FURNISHED BY THE O/O GCZMA
LINEAR WALL

GOVERNMENT OF GOA

Directorate Of Settlement and Land Records
PANAJI - GOA

SITE PLAN

as per the notice of site inspection of Member Secretary, Goa Coastal Zone Management Authority vide letter No.GCZMA/N/ILLE-COMPL/21-22/13/354 dated 17/06/2021 & Corrigendum No.GCZMA/ILLE-COMPL/21-22/13/423 dated 24/06/2020 in respect of S.No./ Sub Div. No. 246/ 1 of Village Taleigao of Tiswadi Taluka.

Scale :1:500

NOTE:-

THE LEGALITY / ILLEGALITY OF STRUCTURES SHOWN ON THIS PLAN IS NOT KNOWN AND THEREFORE THIS PLAN SHALL NOT BE USED FOR ANY PURPOSE SUCH AS DEVELOPMENT OF STRUCTURES, REVENUE SURVEY MATTERS, OBTAINING LICENSES, PERMISSIONS, CONVERSION OF LAND, ETC. THIS PLAN SHALL BE USED FOR REFERENCE PURPOSE ONLY.

LEGEND

🟩 LINEAR WALL
▭ HTL LINE EXTRACTED FROM DRAFT CZMP PLAN 2011 AS FURNISHED BY THE O/O GCZMA
⬚ STRUCTURE AS PER SURVEY PLAN

Surveyed By :
Rajesh Harmalkar (F.S)

Assisted by :
Satishkumar Naik (F.S)
(Representative O/o GCZMA)
Devendra Gaonkar (F.S)
(Representative O/o GCZMA)

Prepared By : Rajesh Harmalkar (F.S)

Verified By:Yeshwant Bicholkar (H.S)

Surveyed On : 28-06-2021.

19/DSLR/Re-Cell/CRZ Mapping/21/13

True Copy

ANNEXURE 8

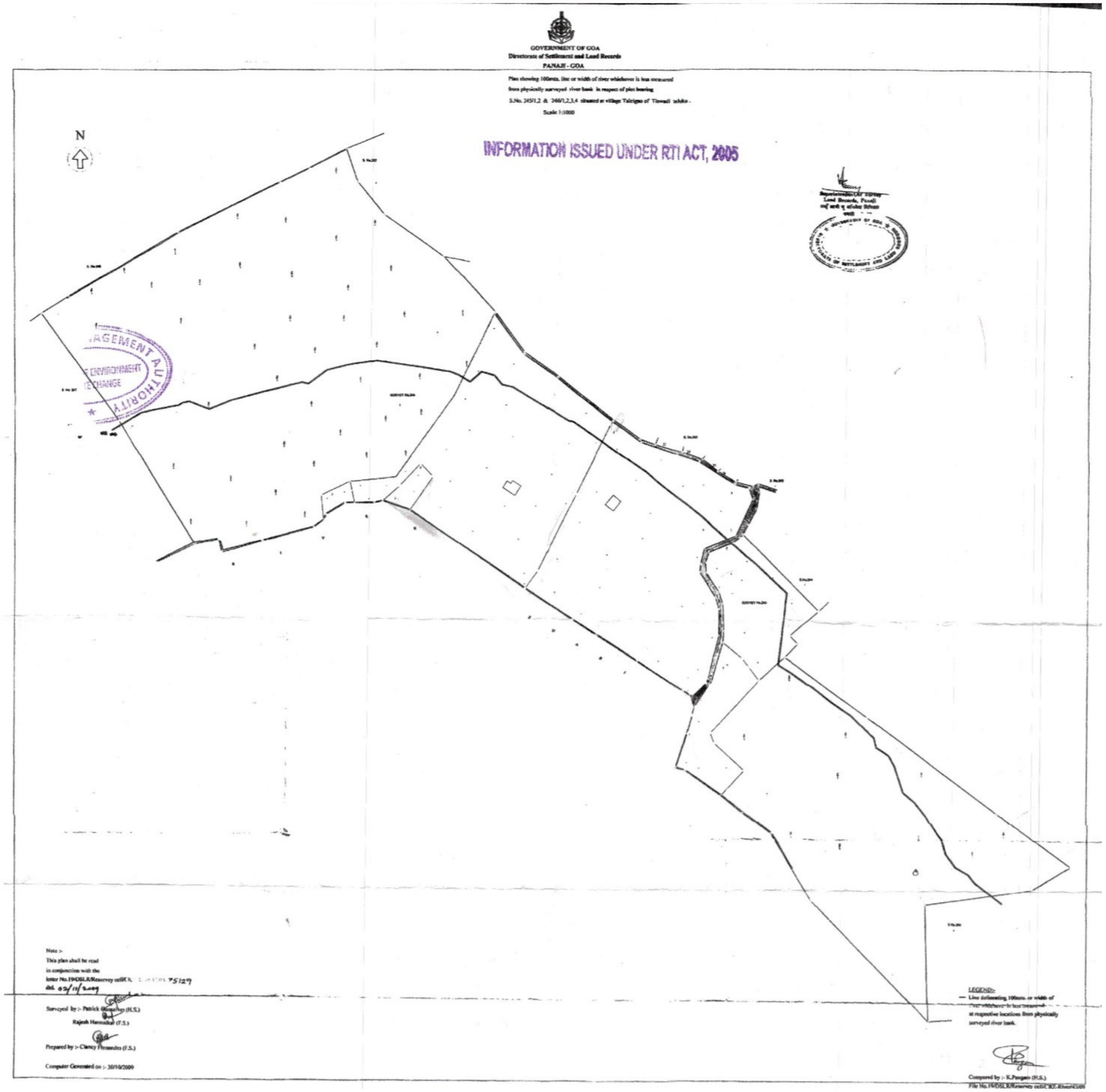
[Map prepared by Applicant - showing location of impunged structure, in relation to property of Resp. No. 3 company]

R
I
HTL LINE EXTRACTED FROM DRAFT CZMP PLAN 2011
AS FURNISHED BY THE O/O GCZMA
NEW STRUCTURE
LINEAR WALL

True Copy

ANNEXURE 9

[Map prepared by DSLR]



GOVERNMENT OF GOA
Directorate of Settlement and Land Records
PANAJI - GOA

Plan showing 100mts. line or width of river whichever is less measured from physically surveyed river bank in respect of plot bearing S.No. 245/1,2 & 246/1,2,3,4 situated at village Taleigao of Tiswadi taluka.

Scale 1:1000

INFORMATION ISSUED UNDER RTI ACT, 2005

Superintendent of Survey
Land Records, Panaji

Note :-
This plan shall be read
in conjunction with the
letter No.19/DSLR/Resurvey cell/CR 75129
dtd. 02/11/2009

Surveyed by :- Patrick Gonsalves (H.S.)
Rajesh Hannalkar (F.S.)

Prepared by :- Clancy Fernandes (F.S.)

Computer Generated on :- 30/10/2009

LEGEND:-
— Line delineating 100mts. or width of river whichever is less measured at respective locations from physically surveyed river bank.

Compared by :- K.Pangam (H.S.)
File No.19/DSLR/Resurvey cell/CRZ-River/43/09

True Copy

Item Nos. 3 & 4 (Court No. 1)

BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH

(By Video Conferencing)

Original Application No. 04/2013(SZ)
WITH
Appeal No.18/2017(SZ)

C. H. Balamohan Applicant

Versus

Union of India and Ors. Respondent(s)

Date of hearing: 11.04.2022

CORAM: **HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON**
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MS. JUSTICE PUSHPA SATHYANARAYANA, JUDICIAL MEMBER
HON'BLE DR. SATYAGOPAL KORLAPATI, EXPERT MEMBER
HON'BLE PROF. A SENTHIL VEL, EXPERT MEMBER

O.A. No. 04/2013(SZ)

For Applicant(s): Mr. A. Yogeshwaran, Advocate

For Respondent(s): Mr. G.M. Syed Nurullah Sheriff, Advocate for R1 & R5.
Dr. D. Shanmuganathan, Advocate for R6 to R8.
Mr. V. Balamurugan and Mr. Alex, Advocates for R9, R10, R12, R20.
M/s. Suvitha, Advocate for R13.
Mrs. Madhuri Donti Reddy, Advocate for R16.
Mrs. V.K. Rema Smrithi, Advocate for R17.

Appeal No. 18/2017(SZ)

For Appellant(s): Mr. A. Yogeshwaran, Advocate
For Respondent(s): Mr. G.M. Syed Nurullah Sheriff, Advocate for R1 & R2.
Dr. D. Shanmuganathan, Advocate for R3.

ORDER

1. This order will deal with O.A. No. 04/2013(SZ) and Appeal No. 18/2017(SZ) as the both matters involve common issue of protection of stretches of coastal line affected by the human induced erosion caused by hard structures.

True Copy

Introductory

2. O.A. No. 04/2013(SZ) was filed on 17.01.2013 raising the grievance of destruction of Puducherry and Tamil Nadu Coastal Environment due to construction of hard structures causing continuous erosion of the coast. It is submitted that not only the stretch in question but most parts of Indian Coastline - both on the East and West Coasts are under the influence of the Littoral Drift.

3. Appeal No. 18/2017(SZ) has been preferred against CRZ Clearance dated 06.10.2016 granted by the SEIAA, Tamil Nadu for proposed construction of series of 19 Groynes from Ennore to Ernavoorkuppam in Madhavaram Tuluk of Tiruvallur District, Tamil Nadu, by the Public Works Department (WRD). **The clearance has been granted subject to orders of this Tribunal in OA04/2013**. The said appeal was filed on 28.2.2017 and was admitted for consideration on 10.03.2017. To appreciate the issue involve, we may refer to some of the averments in the O.A.

Main contentions of the Applicant/Appellant

4. According to the applicant there is large scale human induced erosion and destruction. The Littoral Drift varies from one coastal compartment (or sediment cell) to another. Within each of these coastal compartments, the undisturbed coastal environment and habitat is usually in a state of equilibrium. For such a state of equilibrium to exist within a coastal compartment, the "sedimentary budget" within a compartment needs to be maintained. The sedimentary budget is something that has been arrived at and is determined by the prevailing natural phenomena along a particular coast. Just like the water level in

a river is maintained and determined by the "water budget" of its catchment area, similarly the "sediment budget" of the "river of sand" along the coast is determined by the related factors within its sediment cell.

5. When the "sedimentary budget" within a coastal compartment is disturbed and upset, i.e. when the natural movement of sand is disturbed and interrupted for example by man-made coastal structures, a cascading effect takes place along the shores of a given sediment cell. When a coastal structure is erected in the path of the freely moving sand along the coast, the structures prevent the natural flow of sand in the same manner as a dam across the path of river interrupts the flow of water. In such an instance one part of the coast gets an excess of sand and the other side on the down-drift is starved of sediment. The side that is starved of sediment starts and keeps eroding as long as fresh input of sand is not provided.

6. Because coastal compartments and sediment cells are large, often larger than artificial boundaries such as politically determined state boundaries, one sediment cell may overlap two neighboring states. This is particularly true along the East coast of India, where for instance stretches of coastline of the States of Tamil Nadu and Puducherry are part of the same coastal compartment and sediment cell. This is particularly relevant in the case of Puducherry as its territory is fragmented and surrounded by the territories of Tamil Nadu. Thus, if the sediment budget within a coastal compartment that is shared by two states is upset, the impact of such interference will be felt across states.

7. The environmental destruction caused by the construction of hard structures on the coastline which negatively affect the coastal

processes, the environment and the communities is a problem that is not confined to either the Union Territory of Puducherry, or to the State of Tamil Nadu. Rather, it is a situation in which the negligence and/or mismanagement of one government causes destruction both within its own jurisdiction and within the neighboring jurisdiction. Because **the damaging effects of these hard structures transcend state and union territory boundaries,** responsibility for preventing such damage rests equally with the Union Government of India, as well as with the governments of the Union Territory of Puducherry and Tamil Nadu.

8. The Puducherry Region of the Union Territory of Puducherry and large parts of the Tamil Nadu coastline, are situated on the east coast of India which has a sandy coastline and is therefore vulnerable to human-induced change and is thus ecologically sensitive and fragile. The coastal geomorphology and related ecosystems play a large and vital role in the economic development of the region, providing a large number of functions and services, from sustaining ecology, traditional fishing communities to attracting visitors to Puducherry's tourism industry. The severe and rapidly worsening coastal erosion is damaging the subsistence based, sustainable and lucrative sectors of the local economy making the affected region increasingly ecologically, socially and economically vulnerable.

9. Over the past two decades, Puducherry has suffered large scale coastal erosion induced by imprudent, ad hoc and unscientific construction of hard structures on the coast which have a constant, negative impact which is felt and aggravated with every single day that goes by. This problem of human-induced coastal erosion has not been addressed by the Government of Puducherry. Instead, the coastal

management measures adopted so far have only transferred and aggravated the problem of erosion down the coast to the neighbouring state of Tamil Nadu which has been facing the same ever-increasing problems of human-induced coastal erosion since over a decade.

10. The problem of large scale and rapid coastal erosion in Puducherry started in and around 1986 with the construction of an artificial harbour in Ariyankuppam estuary, situated 1.5 km to the south of the Puducherry town. The harbour was meant to provide an artificial channel from the open sea into the Ariyankuppam estuary to provide a safe entrance for barges and other sea-going crafts. The Harbour was finally commissioned in 1993.

11. To keep the mouth of the harbour open to the sea, two breakwaters were constructed to the south and north of the harbour mouth, at either side of the Ariyankuppam estuary. As a result, the northward flow of sediment along the coast was blocked at the southern breakwater, starving the coast to the north of the harbour of sand and causing severe erosion of the coast. The construction of breakwaters in the Puducherry harbour thus commenced the process of coastal erosion and, as a consequence, several kilometres of beach in Puducherry Town has been completely lost.

12. The process of massive erosion caused by the harbour construction was not unexpected. To the contrary, it was expressly anticipated by the studies and recommendations by Centre for Water, Power and Resource Studies ("CWPRS") and Consulting Engineering Services Private Limited ("CES"), which advised the Government of Puducherry while the project was still in the planning stage. Those studies accurately predicted that the breakwaters at the harbour

entrance could cause massive erosion to the north of the harbour, as the structure would block the natural, incessant migration of sand. The studies further predicted that sand would accumulate to the south of the breakwater and the harbour entrance would silt up due to littoral drift. The consultants warned that constant maintenance and dredging was required to clear the harbour mouth, to keep it open. The studies recommended that sand dredged from harbour mouth must be used for sand nourishment to the beaches north of the harbor in order to mitigate the negative impacts caused by the blockage of sand by the harbor breakwaters. The consultants further concluded that continuous sand by-passing -whereby sand blocked and accumulating at the southern breakwater would be mechanically transferred across the harbor mouth and allow it to resume its northward flow up the coast - was required to prevent and mitigate erosion of the coastline north of the harbour, where the town of Puducherry Town as well as several fishing hamlets are situated. An elaborate system of mechanical sand by-passing with dredgers to pump sand from the south side of the harbour to the north side, was therefore adopted when the port was constructed in order to mitigate the negative impacts of coastal erosion.

13. The planned process and system for mitigation which consisted of mechanical sand by-passing and beach nourishment was never efficiently operated by the Government of Puducherry as the system was never fully or properly implemented. Since 1993, when the Ariyankuppam harbour was formally commissioned and became fully operational, it is estimated that out of the total amount of maintenance dredging to be undertaken by the Government of Puducherry, less than about 25% of the total required volume of sand has been dredged till now. However, less than that (it is estimated about 50%) was used to

nourish the beaches as the dredged sand was instead wrongfully either used for land reclamation, disposed of into the deep sea or pilfered by illegal sand miners. As a consequence, the massive human-induced erosion predicted by CWPRS and CES occurred precisely as they said it would, completely wiping-out 10 kilometres of beautiful and important sandy beach along the historic promenade of Puducherry town, the fishing hamlets of Kuruchikuppam, Vaithikuppam, Solai Nagar in Puducherry and the fishing hamlets of Soudanikuppam, Nadu Kuppam, Thandirayan Kuppam and Chinnamudaliarchavadi Kuppam in Tamil Nadu. Other coastal communities further to the north are also witnessing the shrinking of their beaches as the human-induced erosion threateningly moves northwards.

14. In 2002, long after the beach in Puducherry town had disappeared, following several representations made by members of the civil society as well as by experts, the Government of Puducherry instituted a program of sand by-passing and artificial beach nourishment, using sediment dredged from the harbour to provide northward flowing sand. Within a short period of time, small areas of beach began to re-form adjacent to the town. However, unfortunately this program was not sustained and the new areas of beach quickly disappeared when artificial beach nourishment ended.

15. The massive erosion process unleashed by construction of the harbour did not stop with the evisceration of the sand beach. Without the presence of the beach and its corresponding off-shore sand bar, the waves which once formed some distance from shore and broke gently on the slope of the beach now crashed directly onto the once-dry land. Goubert Avenue, more commonly known in Puducherry as "Beach

Road", which runs for 1.5 kilometres along the shore where the sandy beach used to stretch, was threatened as the land beneath it was undermined by the ongoing erosion. Because of scouring of sand below the promenade, the road started to crack and crumble and had to be entirely re-laid.

16. With the natural flow of sand blocked at the harbour and the system of sand bypass neglected, the erosion which eliminated the beach now threatened the very heart of Puducherry town, including the very government offices, the Chief Secretariat, in which the decision to build the ill-considered harbour was originally taken. Instead of activating the sand by-passing system to mitigate the erosion and nourish the beaches as originally intended, the government of Puducherry chose to create a rip-rap seawall along Beach road, dumping crores of tonnes of massive rocks, trucked-in from quarries in Tamil Nadu to "defend" the town against further erosion.

17. In August 2001, a Preliminary Report Submitted by NOIT-IIT to the Govt. of Puducherry proposed the construction of groynes along the coast of the Puducherry Town. This proposal was opposed by members of civil society groups as it was deemed to be detrimental to the coastal environment. A second opinion on the proposed project was sought by the Government. This proposal was subsequently shelved and thankfully never saw the light of day.

18. A groyne is an impermeable wall extending perpendicularly from land into the sea. Along the Puducherry coast the objective of a groyne is to capture the northward-moving sand along the southern side of the groyne. Indeed, tiny scalloped beaches have formed along the massive groynes; but these small gains have come at an enormous cost. Just as

the breakwater at the harbour trapped sand to the south and caused massive erosion to the north, the groynes rapidly accelerated the northward process of coastal erosion.

19. Clearly, groynes were faulty as a solution as they would only succeed in moving erosion northwards and were no substitute for beach nourishment. Several groups were opposed to this wasteful and environmentally unsustainable exercise and sought scientific opinion to buttress what was clearly common sensical. In October 2001 DELFT TECHNICAL UNIVERSITY in their expert opinion to INTACH, Pondicherry on NIOT's proposal stated that the NIOT's proposal did not prevent structural erosion in the area north of the groyne field nor did it take away the causes of siltation of the harbour entrance. The University further suggested that more studies were needed to be undertaken, an Integrated Coastal Zone Management Plan had to be prepared and alternative solutions such as sand bypassing and beach nourishment to mitigate the coastal problems was to be explored. Although all of this information and suggestions were shared with concerned Government authorities no suitable' action was taken.

20. In April 2002, a civic group called Citizens Forum of Pondicherry also raised objections to this proposal. The construction of groynes was opposed as the groynes would merely transfer the erosion northwards and not solve the root cause of the problem, the disruption of the littoral drift by the harbour. They instead suggested that detailed studies should be undertaken which included the redesigning of the harbour entrance. They also objected to the NIOT/IIT's concept of conducting trials in the Ocean at the detriment of the environment. Heeding to all

this criticism, the Government of Pondicherry sought a second opinion from Danish Hydraulics Institute (hereinafter referred to as "DHI").

21. Subsequently on October 2002, a Coastal Erosion Study was conducted by Study Group CF01 of DHI and they concluded as follows:

- Sand by-passing is the best solution.
- Construction of groynes is not a favorable solution.

The Study Group also recommended that:

- Viability of the harbour project was to be investigated.
- Preparation of an ICZMP.
- Dredging and by-pass were to be monitored closely.

DHI proposed to:

- Conduct site visit and review data.
- Assess annual sediment balance.
- Conduct preliminary design of Port entrance.
- Optimize port entrance layout.
- Prepare design for shoreline management scheme.
- Prepare guidelines for dredging and re-nourishment.

22. However, no suitable action was taken. Between 2002 and 2003, the Government of Puducherry constructed 6 kilometres of seawall along the Puducherry coast, at a cost of several crores of rupees. The decision to abandon the planned and existing mitigating measures of sand by-passing and beach nourishment in favour of seawalls were undertaken without conducting any detailed, comprehensive studies and were therefore undertaken on a purely ad hoc, arbitrary and unscientific manner. The construction of seawalls was undertaken in total disregard of the observation and recommendations made by Dr. Z.S. Tarapore and Dr. Vaidyarannan both erstwhile Directors of the CWPRS which were fully familiar with the design of the Puducherry harbor and Ariaynkuppam.

23. On 21 February 2003, Mr. P.P. Vaidyaraman, retired director of CWPRS, who was part of the design team of the Puducherry harbor at Ariyankuppam wrote to the GoP following his visit to Puducherry shortly after sand by-passing and beach nourishment had been undertaken at the Puducherry harbor. Mr. Vaidyaraman was not only extremely pleased with the results of beach nourishment, but also made several suggestions for the continuation of sand by-passing and beach nourishment which he stated should be replicated at several of the other Indian ports as well. However, few of his suggestions were implemented.

24. While the "hard structure" of the seawall has had the limited superficial effect of keeping the erosion from penetrating onto Beach Road, it accelerated two other erosion processes. First, the surf which now crashed against the hard barrier of the seawall carved-out and scoured the sea floor that was once safely beneath the sand beach. This would come to have dire effects on the quality of the drinking water in Puducherry, creating a short path for saline intrusion into the town's aquifers. It would also prevent any future beach from forming along that stretch of coast because the sea floor was now too deep and unstable to retain migrating sand, even if it had been allowed to flow as nature had intended.

25. The second erosion process accelerated by the seawall was to the north of the construction. At the end of the hard structure, the long shore currents form a powerful eddy, scooping-out the "unprotected" land in deep pockets of erosion. Thus began a vicious cycle of erosion and defense, more-erosion and more defenses. As the seawall transferred and spread the problem of erosion northward up the coast,

more and more beach was lost, more village land fell into the sea, and the disaster migrated further-and-further. Puducherry's coastal erosion problem had now become Tamil Nadu's problem as well.

26. In 2003 Tamil Nadu PWD initiated its own "hard structure" protection measures, in response to the erosion to its fishing villages caused by the hard structures built by its southern neighbor. Seawalls were built in Nadukuppam, then in Sothanaikuppam during 2005-2006, as the coastal erosion was forced northward. Today, these seawalls extend all the way to Kottakuppam and Chinnamudalaiyar Chavadi and Tamil Nadu is passing the problem back to Puducherry, as the erosion now reaches the Union Territory enclave at Pillaichavadi and beyond.

27. The fishing villages along the coast to the north of Puducherry town lost more than just beach and village land as the erosionary process crept northward. They also lost their industry. As the seawall lengthened, fishermen could no longer launch their traditional skiffs and catamarans. The beaches from which they launched their boats into the sea and landed their catch back on land were gone. It is impossible to launch from the steep seawall, which has waves crashing hard against it. The loss of the beach space has also affected the livelihoods of the fishing communities in several other ways as the beaches are also used to dry fish, repair nets and carry out several other related activities. Fishing communities complained to the Government of Puducherry that without beaches to fish from, their livelihoods were lost.

28. In 2004, Dr. Z.S. Tarapore, retired director of CWPRS, who was part of the design team of the Puducherry harbor at Ariyankuppam wrote to the GoP following his visit to Puducherry and warned the GoP against construction of groynes. He warned that the construction of groynes was a "dangerous proposition" since the groynes would only transfer the problem of erosion further down drift, where there were heavily populated areas. Among other things he suggested to undertake "a massive nourishment programme" to control the problem of erosion to the north of the harbor. During the same time, in his address to the 6th CPDAC (Coastal Protection & Development Advisory Committee of the Central Water Commission), in the year 2004, the problem of erosion was discussed and it suggested that groynes and seawalls were not the answer. The erstwhile Chief Secretary of Puducherry advocated that "cost-effective and environment friendly technologies" should be adopted to address the on-going problem of erosion. During the 10th CPDAC meeting it was once again emphasized that "coastal protection works and the coastal zone management should go together since one had impact on the other. Also, the States should not think only of the sea walls as a protection measure to protect the shoreline but also adopt other new technologies which preserve the beaches and ecology as well."

29. In 2004, the Tsunami struck the East coast of India. The coastal populations of the Puducherry region did not suffer much damage as most of the inhabited areas were located in areas that were in significantly elevated from the level of the sea. However, with an abundance of funds flowing into the Government's coffers, as a knee-jerk reaction and a populist measure, large amounts of money were

spent to enlarge the seawalls along the Puducherry coast instead of spending those funds on the much required and planned beach nourishment that would have restored the beaches and protected the Puducherry town and coastal villages more effectively against any future Tsunamis.

30. In spite of expert views on the dangers of constructing groynes and the necessity of conducting detailed studies off the coast, the PWD drew a fresh proposal to construct groynes along the Pondicherry coastline. In November 2006, a 50 m long groyne was constructed just adjacent and north of the New Pier. From enquiries it was learnt that this groyne was built without any environmental clearance and its construction was abruptly halted upon enquiries.

31. Notwithstanding the severe erosion along the coasts of Puducherry, the Government of Puducherry did not resume the dredging and sand bypass operations that might restore some portion of beach to its coastline. Instead, under pressure from fishing villages to artificially recreate sandy beaches from which to fish, both the Government of Puducherry and the Government of Tamil Nadu began building groynes at intervals along the coast in 2005.

32. In April 2007, the Government of Tamil Nadu constructed two large groynes at Thandirayankuppam. The southern groyne is 100 m long and the northern groyne is 170 m long. These groynes triggered severe erosion of the coastline to the north. About 70 m wide beach was lost in the same year to the north of the groyne. Since the construction of these groynes, about 2.5 acres of beach has been lost severely affecting the villages of Chinnamudaliarchavadikuppam and Bommayarpalayam.

The village of Chinnamudaliarchavadikuppam lost several homes as a result of the human-induced erosion. Several other private and public properties have also been damaged.

33. On 20th July 2007, members of civil society groups met the officials of PWD & Port Secretary, Mr. Anbarasu and discussed the urgency for the Pondicherry Government to resume dredging and sand nourishment activities at Pondicherry Harbour entrance. When queried about the status of the proposed construction of groynes, Mr. Anbarasu stated that there was no definite proposal and he was seriously considering dredging and sand nourishment.

34. In July and August of 2007, elected representatives from the seven fishing villages of Anichankuppam, Chinnamudalyarchavady, Koonimedu, Mudhaliarkuppam, Nadukuppam, Notchikuppam and Pudhukuppam, which are located in the Kottakupam and Marakanam Blocks of the Villupuram District wrote to the Hon'ble Chief Ministers of Puducherry and Tamil Nadu and also submitted resolutions to inform them about their plight caused by the human induced erosion of the coast and also demanded that the beaches in front of their villages be restored so that they may pursue their livelihoods. Being located to the north of Puducherry and seeing the human induced erosion spread towards their beaches they were understandably deeply concerned about the future of their coastal environment and their livelihoods that depended on it. However, no action was taken to fulfill their demands and needs.

35. Following public outcry by several environment groups the construction of other groynes that were also planned was stopped. On

Nov. 3rd 2007 a public consultation meet was held in Auroville between Government officials of Puducherry, Tamil Nadu in the presence of experts (Governmental and Nongovernmental) and civil society groups. The following solutions and measures were unanimously agreed upon and proposed:

Immediate —

a. Activate sand by-passing system for nourishment and restoration of beach immediately north of Puducherry harbor.

b. Undertake model studies urgently to arrive at the best method of restoring the eroding beaches of Puducherry and Tamil Nadu. Study the impact of groyne fields with and without artificial nourishment, before embarking on new measures

c. Remodel the harbour entrance for maximizing natural sand by-passing:

    i. Initially for the existing fishing harbour
    ii. Later for proposed deep water commercial harbour

Long Term:

d. Restoration to include artificial nourishment, as universally accepted

e. Investigate off-shore sand deposits for nourishment

f. Identify suitable sand nourishment equipment to operate in wave environment

Administrative:

g. Coastal Zone Management Authorities (CZMA) of Tamil Nadu and Puducherry to coordinate and take up the issue of coastal erosion jointly

h. Initiate Puducherry component of Integrated Coastal Zone Management Plan (ICZMP), in conjunction with Tamil Nadu's ICZMP.
i. Funds to be provided for modeling and hydrographic survey

36. 0n 7th December 2007, Mr. C.V. Shankar, IAS, Officer on Special Duty (RR) & Project Director (ETRP & TEAP), GoTN who had attended the consultation meet on 3rd Nov. 2007 wrote to the GoP with regards to proposed construction of groyne filed from Kuruchikuppam to Solai Nagar. He requests that this should be undertaken only after the preparation of a comprehensive plan for the coastline, that is sustainable, livelihood sensitive and eco-friendly.

37. On 26th December 2007, the Pondicherry Government inaugurated Capital Dredging, to be taken up at Harbour Entrance. However, when the capital dredging operations began it was shockingly and disappointingly learnt that the dredged sand was being disposed of in deep waters, off shore outside the littoral zone and not used for beach nourishment. Ironically, during the inauguration of capital dredging operations that was held with much fanfare at the New Pier premises, large banners publicizing Beach Nourishment were displayed in spite of the fact that no beach nourishment was being undertaken.

38. On 27th December 2007, members of civil society held meetings with the Port Director of Pondicherry and expressed disappointment that the sand dredged from the harbour entrance was being dumped into the deep waters instead of being used for beach nourishment. Members of civil society met the officials of Pondicherry port and the

Secretary, PWD on 28th December 2007 on the issue of sand nourishment not being undertaken. The officials promised to look into the issue but however on 1st January 2008 the construction of groyne at Kuruchikuppam was resumed without any environmental clearance.

39. In January 2008, representations were made to the Secretary, MoEF about the on-going problem of human-induced erosion along the Pondicherry-Tamil Nadu coastline. The Secretary wrote to the GoP asking them to discuss matters of erosion with GoTN in order to find a viable solution and save the beaches. In total disregard of the observations, recommendation and conclusions of the Nov. 2007 meet, the Govt. of Puducherry initiated a project of construction of groynes along the coast of Kuruchikuppam and Solai Nagar. With construction of groynes continuing to damage the coastline, Jesuratinam, convenor of Coastal Action Network from Nagapattinam filed a writ petition in the High Court at Chennai (W.P. No.1452 of 2008) seeking a Writ of Mandamus, directing the Government of Puducherry (a) to forbear from constructing groyne fields in the coastal region of Puducherry, (b) to conduct appropriate scientific studies for development of a sustainable and comprehensive coastal management plan for the restoration of the Puducherry/Tamil Nadu coastline, and (c) to frame a suitable scheme to ensure that the natural movement of sand is restored so that the coastal areas of Puducherry and Tamil Nadu are protected from erosion. The Government of Tamil Nadu was also a respondent to that petition.

40. This writ petition was disposed on 13 February 2008, after the learned pleader for Government of Puducherry declared in open court

that the activity of construction of groyne field would not be undertaken without the prior permission from the Ministry of Environment and Forestry, Government of India. On this representation by the Government of Puducherry, the High Court dismissed the petition and made no orders with respect to the incidental and ancillary prayers. However, contrary to the undertaking given in Court, construction has begun without obtaining environmental clearance, causing grave irreversible damage.

41. Following the above writ petition, the MoEF constituted a three member committee to visit the Puducherry site proposed for groyne construction. The Committee visited Puducherry on 11th and 12th June 2008 and subsequently reported that as a long-term measure, the GoP should seriously consider sand by-passing of the required amount of sand as this was likely to mitigate the problem of erosion. The committee also suggested that a study covering both Puducherry and adjacent Tamil Nadu coast should be undertaken by a reputed organization. Neither of these have been implemented so far.

42. At the national level, coastal erosion has also been become an increasingly pressing issue with every coastal state facing some form of coastal erosion or the other.

43. In April 2009 the Asian Development Bank prepared a report for itself and the Government of India for India's sustainable coastal protection and management. In this report, the following significant points are made:

Change of philosophy:

> "The change to sustainable and soft engineering measures for protection needs to be supported by an effective institutional framework including the Government at different levels, communities and also the private sector. To achieve the necessary levels of support requires a shift in Government policy with a clear mandate for the concerned organizations. A key technical issue is the diagnosis and identification of appropriate solutions for coastal protection works. The projects presently being implemented in the states are based almost entirely on the continued expansion and rehabilitation of rock protection works. This type of development is and will continue to have very serious environmental and social implications. There is a need to completely reshape the approach and philosophy to planning, design and implementation of coastal erosion works. Soft solutions for erosion control are now well developed and are already beginning to be implemented in India. There is need to help and guide a well-planned and programmed transition process as well as ensure the planning and designs for the proposed investment program meet the highest standard of environmentally and socially appropriate solutions. There is also a need to identify and address the causes of erosion, frequently these are manmade and the most appropriate solution is to address the cause rather than the effect. This requires an integrated and coordinated approach to the planning and development of all coastal infrastructure and shoreline uses."

Sector assessment:

"The coastal protection strategy in India is synonymous with a prime objective to protect the land; the concept of protecting the beach and the environment are relatively new concepts; coastal protection is not perceived within the wider context of the economic development of the coastline. The most frequently applied methods for coastal protection have been through the use of hard structures such as seawalls or groynes. Despite many failures and environmental damage seawalls and groynes have continued to be constructed which in many cases has simply shifted the problem to neighboring coastal areas or left the real problem to be solved by future generations. As the pressure on the coastal zone due to human-induced activities as well as relative sea level rise keeps expanding, there is an urgent need to find sustainable solutions for coastal protection."

"There is a general awareness of the impacts of hard structures. Rock wall comes easily and soft solutions are largely untried and the technologies are not well understood. The continued use of hard technologies for coastal protection are being questioned by decision makers and there is now a widespread interest and realization of a need to change to softer and appropriate solutions The move to softer solutions although an easy and acceptable solution in principle but in practice requires significant behavioral changes by all those involved. The transition from hard to soft structures will require an integrated program of awareness, training, capacity building and other support initiatives."

> "Presently measures to manage coastal erosion have generally been designed as a local emergency measure rather than sustainable and economically beneficial perspective. The most frequently applied protection methods are hard structures such as seawalls or groynes. Such interventions provide only land protection, and do not address the root cause of the problem; in many cases the protection structures actually accelerate erosion resulting in major losses of the beach."

Institutional arrangements:

> "Central Water Commission (CWC), the technical arm of MoWR is the apex agency for shoreline protection / coastal erosion works in the country. CWC implements coastal protection works through two Directorates viz. the Coastal Erosion Directorate (CED) and the Beach Erosion Directorate (BED). The activities of the two directorates are not well coordinated and lateral communication between the two peer bodies is virtually non-existent. The apparent lack of an integrated approach to coastal erosion problems stems from this structural imbalance."

Policy:

> "A major weakness in the current sector orientated sector development is the difficulty of addressing the processes and impacts of one sector on another. A prime cause of erosion is the interaction of coastal infrastructure on the natural coastal processes. To help this horizontal coordination is proposed to establish the CWC and the State Executing Agencies (SEA) as the lead group at National and State levels to coordinate coastal infrastructure activities. At National level the leading

organization should be the CWC. The CWC remit is presently restricted to erosion control but there is a key requirement for the coastal erosion directorate to take on a wider coordination role of all coastal infrastructure works including erosion control, ports and harbors, dredging etc. At the State Level it is proposed to establish a Coastal Infrastructure Management Unit (CIMU) within the State Executing Agencies. This unit would be given a mandate to coordinate all coastal infrastructure programs.

"There is requirement for a policy document to support the process of shoreline management planning. The policy document for shoreline management planning should include:

(i) Charging the Coastal District Authorities to prepare Shoreline Management Plans (in coordination with the State Executing Agencies and agencies) over an agreed period. The shoreline plans would be advisory and non-statutory. The plans would be participative involving the stakeholders and local level stakeholders in the primary planning, as well as lateral involvement of different government departments / sector agencies.

(ii) Increasing the mandates of the SEA and the CWC to take on a lead coordination role in the overall coastal management specifically to coordinate and guide the development and management of all coastal infrastructure.

(iii) Ensuring that all shoreline developments and interventions are properly studied and subject rigorous technical analysis including numerical modeling. Projects should be supported by environmental assessments."

44. In June 2009 an expert committee of the MoEF published the report "Final Frontier - Agenda to protect the ecosystem and habitat of India's coast for conservation and livelihood security." In this report the committee noted that currently, the shoreline of the country is undergoing a major change because of a large number of port and harbor projects. These projects involve large quantities of dredging, shore protection works, breakwaters, and reclamation. Experts are unanimous that each structure would impact the shoreline-particularly the beach formation. Already, many of these infrastructure projects have caused significant shoreline changes-like in Ennore, Puducherry, Alibag, Digha and Dahej. It is also observed that the shoreline is being impacted adversely by mining projects and by interventions like the building of shore-protection structures like groynes. The Committee was of the view that these developments have all led to serious threats to the coast, as especially beaches face severe erosion and shorelines are visibly changing. Given that the Central and state governments propose to construct several ports and harbours all along the shore in the coming years, these projects could have irreversible adverse impacts on the coast. The Committee recommended the following:

> “The government must immediately study the cumulative impacts of the individual projects on the coastline, pending which there should be a moratorium on expansion of existing ports and initiation of new projects.”

45. Subsequently, in 2009 the MoEF assigned to the Ministry of Earth Sciences (MoES) to conduct a study for identifying the coastal stretches with regard to human-induced erosion/accretion caused by construction of shore protection measures and breakwaters of ports. Based on the discussions held with MoES, the study was initiated in

two phases namely - (a) phase-I to submit a report based on existing data/information by 15 th October, 2009; (b) phase - II of the study involves micro level analysis that would be carried out for the entire country for the purpose of examining shoreline changes due to existing projects and identify suitable sites for development.

46. In October 2009, ICMAM and INCOIS, MoES, submitted a joint report to the MoEF in which they stated that:

> "Coastal structures constructed for port operations and coastal protections works interfere with the littoral transport are found the most common cause of coastal erosion."
>
> "A groyne just shifts the erosion problem to the downstream area..: The more efficient the groyne field is in protecting the shoreline within the groyne field, the more lee side erosion will be experienced downstream."
>
> "When a breakwater is built on the shoreline it interferes with the littoral drift budget and the results are sedimentation and shoreline impact. Like a groyne, the breakwater acts as a blockage of the littoral transport, whereby it causes trapping of sand on the upstream side in the form of an accumulating sand filet, and the possible bypass causes sedimentation in the entrance. The sedimentation requires maintenance dredging and deposition of the dredged sand. The result is a deficit in the littoral drift budget which causes lee side erosion along the adjacent shoreline."
>
> "The major interventions which lead to morphological impact are listed as:

> Coastal structures of any kind, which by their occupation directly impact the transport processes and thereby the coastal morphology. Such structures are typically the Ports and marinas, active coastal protection structures (groynes, breakwaters and all other structures occupying part of the foreshore and/or the shoreface), passive coastal protection structures (revetments, seawalls etc. which fix the coastline), reclamations and dikes, inlet jetties at tidal inlets and sea works at river mouths, embankments for bridges /runways, intake / outlet structures crossing the littoral zone."

The report also stated that about 23% or as much as 1248 km of shoreline along the Indian main land is affected by various degree of erosion varying from minor, moderate to severe.

47. In May 2010, the Department of Science, Technology and Environment (DSTE) and the Puducherry Coastal Zone Management Authority (PCZMA) of the Government of Puducherry held a consultation meeting on "Restoration and Protection of Puducherry Coastline" which was attended by various Government Departments, experts from the National Institute of Ocean Technology (NIOT), Anna University, members of the Auroville Foundation and of civil society. As reported in the Minutes of the Meeting "There was a consensus among the participants on the need to protect and nourish the coast of Puducherry and the adjoining areas by adopting site specific coastal protection and restoration techniques after carrying out scientific studies and in consultation with all stakeholders including fishermen community." However, no concrete measures have been implemented to date.

48. A May 2010 document of the CWPRS states that of the various methods used for protection of the coast such as seawalls, revetments, bunds, groynes, offshore breakwaters, etc., the nourishment beach is the best method that should be used for shore protection. However, due to other considerations beach nourishment is still seldom used. Later in the same year, the Indian Journal of Geo-Marine Sciences publishes a paper on coastal erosion and mitigation methods. The author of that study concludes "The recent trends in coastal erosion mitigation is shifting towards soft, innovative, and pro-active methods, since the hard methods have their own repercussions on coastal land and beaches such as down-drift erosion, high cost, poor aesthetics etc. Hard structures such as seawalls and revetments, stop erosion of coastal lands, but refocus the erosion onto the beach. A number of soft methods are available now for erosion mitigation and are being used popularly all over the world. They are very eco-friendly, cheap and construction-friendly too. They may be necessarily adopted on a larger scale in the future erosion mitigation projects, and choice of the particular solution depending upon the local hydrodynamics and site conditions."

49. In October 2010, the PWD, GoP had commenced a Sea Wall project along the coast of Chinnakalapet Village, Puducherry without obtaining prior clearance under the Coastal Regulation Zone Notification, 1991. The site was inspected by members of the Puducherry Coastal Zone Management Authority and direction was issued on 13.10.2010 to the Chief Engineer, PWD under Section 5 of Environment Protection Act, 1986 to stop the sea wall construction immediately and submit necessary application to PCZMA for obtaining the Coastal Regulation

Zone Clearance. PWD has complied and stopped the work. No further work has taken place since then.

50. In the month of November 2010 an official of the MoEF from the Southern Regional Office at Bangalore assessed the state of the coast of Puducherry in relation to the development of fishing harbor at Murthykuppam as it was being opposed by civil society groups. In this report it was observed that "For the old fishing harbor, it was informed that even though, on some earlier occasions, some of the concerned authorities have attempted to address the problem of coastal erosion, the measures taken for the old harbour remains inadequate and not comprehensive since the attempts made were too small and were on piecemeal basis, thus the efforts are not successful in controlling the erosion problems. In the new fishing harbor also a similar situation is arising. Now it is high time for the Government of Puducherry to prepare and launch a detailed implementation plan after due consultations with experts and by integrating all the concerned departments & stake holders for properly managing the coastline and to solve the issues arising out of developments which are taking place in the coast line of Puducherry and adjoining Tamil Nadu."

51. In the month of December 2010, the Project Implementation Agency for the Emergency Tsunami Reconstruction Project (PIA, ETRP) of the GoP issued a Tender for "Maintenance Dredging Works at Ariyankuppam River and the Sea Mouth for Puducherry Fishing Harbour" as part of the reconstruction and modernization of fishing harbor at Puducherry. The related maintenance dredging operations began in 2011 and are still continuing to date. However, while the dredging contractor is required to dispose the dredged material in the

ocean, the dredged material was instead dumped on the land and within the harbor limits. The dredged sand, estimated to be amounting to about 1,50,000 cubic meters is still lying on the land instead of being returned to the littoral drift. This subtraction of coastal sediment from the sedimentary budget of the Puducherry-Tamil Nadu coastal compartment and sediment cell is resulting in erosion of the coastline. Several representations to put the sand back into the sea to nourish the beaches have been made but no action has been taken till date.

52. In January 2011 the Puducherry PWD issued an Expression of Interest (EOI) for erosion control and reclamation of Puducherry beach with "soft solutions" such as geo tubes, clearly stating that all conventional "hard" measures such as "boulders, tetrapods, etc.," were excluded from the chosen solutions, as deemed harmful for the coastal environment. Additionally, it is stated that the proposed solution should have a short-term and long term perspective plan to ensure better coastal environment. Moreover, the proposed solutions should involve the authorities of neighbouring state and stake holders. Most importantly the consultant should "ensure that there is no adverse impact to the coastline due to the implementation of the project." This point is emphasized in the EOI repeating that "there is need to ensure that this does not affect the adjoining features of the coast line both in the state of Tamil Nadu and Puducherry." Finally, during the post-construction stage, the project proponent is supposed to achieve the objectives of coastal protection and reclamation in a "holistic manner." By undertaking such a project, the Government of Puducherry should be able to address its coastal erosion problems while ensuring that the

neighbouring state and areas of Tamil Nadu not only do not get affected but also benefit from it.

53. On 18th August 2011 the Hon'ble Minister for Public Works Department, Govt. of Tamil Nadu writes to the Hon'ble Chief Minister of the Govt. of Puducherry to apprise him that the lack of sand by-passing and its effect on the littoral drift at the Ariyankuppam Harbour in Puducherry has caused severe erosion of the neighbouring Tamil Nadu coastline, as a result of which in the year 2006, 200 m of beach was eroded, several homes were destroyed and the life of a child was lost. The Hon’ble Minister draws the attention to an earlier letter from the Govt. of Tamil Nadu in which the GoP is requested not to continue construction of groynes without proper technical studies as it is likely to further affect the Tamil Nadu shoreline. He also informs that the proposed Deep Water Port would have a catastrophic effect on the shoreline of Villupuram District. He also requests the GoP to start sand by-passing and to desist going ahead with the proposed Deep-Water Port without obtaining the prior consent of the GoTN so that Tamil Nadu coastline is not further affected. On 29th November 2011, a second letter is sent to remind the GoP to start sand by-passing at the harbor and to stop further interruption of Littoral Drift that would take by construction of the proposed Deep Water Port which would further affect the Tamil Nadu coast and go against his Govt's interests.

54. On 29th Dec. 2011, the Secretary, Port Department, GoP held a stakeholder’s meeting on restoration of Puducherry coastline as reported in the Minutes of the Meeting circulated on 23rd Feb 2012. During that the Secretary suggested that "all should work for a

sustainable solution to the problem of erosion." The Chief Engineer, PWD-cum Director of Ports-responded that "the PWD was called by the MoEF and had suggested that Geotubes be put up along the Puducherry coast towards restoring the coastline." During the meeting "all agreed that the rejuvenation of the lost beaches is of vital importance since it would not only help the fishermen but also facilitate tourism." To conclude, the Secretary assured that "a long term sustainable solution to the restoration of the coastline of Puducherry [was] for the benefit of one and all."

55. On 2nd February 2012 the Government of Puducherry constituted the Evaluation Committee for Assessing the consultant for the coastal protection work in Puducherry using Geotextile tubes. This committee is yet to meet.

56. In March 2012 the MoEF wrote to the Government of Tamil Nadu to enquire about the construction of groynes along the Chinnamudalyar Chavadi Kuppam coast based on a complaint against the proposed groynes that was made by the NGO Pondy CAN. No action was taken.

57. In its September 2012 report, the National Institute of Ocean Technology (NIOT) stated the following with regard to the groynes constructed in Puducherry and Tamil Nadu: "It is recognised that groynes should be used only to maintain existing conditions, rather than enhancing beach volume or eliminating erosion... But this should be used only after exhausting all other available options for restoration." The report also stated:

"There is a need for a well-defined plan that seeks to treat the shoreline and the issue of erosion in a more integrated, sustainable and strategic manner."

"It is recommended to have a total and common shoreline management plan for the entire Puducherry and the adjacent Tamil Nadu coast so that short-term and long-term strategies can be drawn considering the coast in total. The short-term strategies required at specific sites can be designed and integrated in long-term strategies, if a shoreline management plan is prepared."

"As Puducherry is known for its tourism/recreation, it is advisable to restore the natural beach by implementing beach nourishment... The above option will not only help in gaining a natural beach but also help in controlling the erosion of the northern coast. The detailed design of beach nourishment scheme can be worked out based on discussions. Also, eco-friendly techniques and "soft engineering measures" to stabilize the coast could be implemented along with beach nourishment for retaining the sand and to restore the ecological functions and services that are provided by sandy beach ecosystems as well as enhance livelihood opportunities for the fishing communities and increase value to the coast." "A long term and permanent solution can be found if both the Tamil Nadu and Puducherry Governments jointly work towards a common, long-term and sustainable shore restoration strategy. Short-term solutions may need to be implemented, but these have to take into account the long-term solutions and should be "no-regret" solutions." "The general principle of "working with nature" would be a better

> approach for cost-effective and sustainable coastal protection measures. Puducherry needs to consider modern protection practices which achieve a more effective and sustainable means of coastal protection while also addressing local amenity and economic development aspects. It is most important to ensure that the natural movement and flow of sediment along the shoreline is maintained."
>
> "The beach restoration will primarily benefit the coastal dwellers living along the Puducherry and nearby Tamil Nadu coast including fishing households, the owners, operators and employees of fishing boats, hotels and other tourism related businesses and their employees. But mostly it will benefit all the residents of this peaceful coastline whose young children have never even seen its beautiful beaches."

58. The report “The Challenged Coast of India” published in October 2012 also points out with regard to the performance of the groynes that were built along the Soudanikuppam-Thandiriayankuppam coast that for every square meter of beach that has been artificially gained with the use of groynes, about 4 square meters of beach space is damaged and lost on the down drift side of the groynes. Therefore, it is unequivocally demonstrated that groynes are causing more damage to the coast and that they are exacerbating the problem of erosion.

59. Neither the Government of Puducherry, nor the Government of Tamil Nadu examined any available options for beach restoration. Mechanical sand bypass was not implemented. More importantly, there is no record that the Government of Puducherry ever considered the simplest, most effective way to' restore the beaches, end the massive

erosion of village land into the sea, restore the livelihoods of the local fishing communities, and reverse the trend of increasing saline infiltration into the local aquifers: to remove the damaging harbour at Ariyankuppam and allow the natural flow of sand to resume. When one compares the insignificant economic benefit conferred by the harbour with the enormous economic, social, and environmental cost of the ravaged coastline for 18 kilometres to the north (and moving ever-northward as hard structures proliferate), it is astonishing that the Government of Puducherry never considered this obvious alternative.

60. A comprehensive plan for coastal protection has not yet been considered in spite of the fact that both the Governments of Puducherry and Tamil Nadu are fully aware that the erosion is spreading northwards. Instead of taking proactive measures to mitigate the erosion, the erosion is instead allowed to go on, increase and further degrade the coastal environment. Both the governments jump into action only when it is too late and the erosion of the coast has become a manmade disaster in which the homes and livelihoods of the coastal communities have been destroyed. It is only in such belated circumstances that the concerned Government authorities resort to the construction of seawalls as emergency measures. Under these disastrous circumstances, the concerned authorities justify the construction of seawalls as their only option available. Such tardy actions, ad hoc-ism and poor planning and negligence only results in the destruction of a greater extent of the coastal environment.

61. The destruction of sandy beaches represents a very significant economic loss to Puducherry's tourism industry and to the traditional

fishing industry all along the damaged coast. It is estimated that thousands of traditional fishermen have been unable to pursue their livelihoods since the beaches were lost and seawalls have come up; and thousands more are now forced to launch their boats from places outside their own villages. An estimated 300 acres of land mass has been taken by the sea, including numerous houses and other buildings in coastal villages. The governments of Puducherry and Tamil Nadu have spent hundreds of crores of rupees dumping boulders to create riprap seawalls and groynes. In addition to the environmental and aesthetic loss to the immediate coastline, this construction activity entails collateral environmental damage to the mountains from which the boulders are quarried and the energy used to transport them from mountain to seaside. The hard structures on the coastline have radically transformed the morphology and morphodynamics of the coast and intertidal marine zone. This has far-reaching consequences for the entire ecosystem.

62. The endangered Olive Ridley sea turtles which are listed under Schedule I of the Indian Wildlife Protection Act (1972) nest along the Puducherry-Tamil Nadu coastline. Olive Ridleys are known to return to their natal beaches to lay their eggs. But when man-made structures have been built in the place of their nesting beaches, as is the case in Puducherry and Tamil Nadu, these structures prevent sea turtles from continuing their innate life cycles. Coastal structures therefore directly threaten and further endanger sea turtles by reducing suitable nesting habitat and displacing turtles into less-than-optimal nesting areas. The destruction of the natural beach space and habitat by human induced erosion followed by the armouring of the coast with seawalls

and groynes makes it impossible for sea turtles to make their nests on the beaches. The ad hoc and unscientific construction of seawalls and groynes along the coast is therefore directly endangering the existence of sea turtles.

63. The armouring of the coast with seawalls and groynes also results in the destruction of intertidal habitat that is required by marine flora and fauna such as planktons, crustaceans, bi-valves, mollusks, other invertebrates and even fishes. These flora and fauna also form part of the marine food chain which supports fish stocks. The destruction of inter-tidal habitat therefore impacts large numbers of marine species and ecosystems.

64. Without the beach providing the crucial sandy buffer between the sea and the land, erosion of the seabed at the coastal margin has resulted in salt water infiltration into the local aquifers. The Central Ground Water Board has reported that the ground water development in the Puducherry region is rather very high and no further groundwater development is to be encouraged. On the other hand, there is an urgent need for regulation of over-exploitation, protection and augmentation of ground water resources to recharge the depleted aquifer systems. An assessment of the vulnerability of seawater intrusion in Puducherry coastal region is indicating that both the northern and southern coasts of the Puducherry region are vulnerable to seawater intrusion. As the groundwater resources of the Puducherry region are already stressed, the increase of seawater intrusion due to human induced coastal erosion has to be avoided at all costs.

65. The increased salinity in Puducherry's fresh water has resulted in hundreds of hectares of farm land becoming fallow. In addition to ruining the taste of the local drinking water, increased salinity is well-known to cause kidney disease. Several of the shallow wells along the coast on which the local communities depend for their freshwater requirements have already turned saline. The loss of freshwater resources is causing severe hardship to the local communities as they have to find alternative sources of freshwater.

66. It is also important to note that at the national level the coastline also represent the boundary of the nation and its territories. The indiscriminate, uncontrolled, and unnatural alteration of the coastline is resulting in the uncontrolled alteration of the national boundary, both on land as well as offshore, of the international maritime border and that of the Exclusive Economic Zone (EEZ). This is something that has political and economic implications which are of national concern.

67. The seawalls and groynes are being built without any carrying capacity studies. The coastal environment of the Puducherry-Tamil Nadu region is already heavily and to a large extent impacted by the on-going human induced erosion of the coast caused by the Puducherry harbor. Further armouring of the coast with seawalls and groynes will only result in reducing the carrying capacity of the coastal environment beyond the point of self-sustainability.

68. The coastal environment is a highly dynamic and therefore complex environment to manage. Experience has shown that the less one interferes with coastal processes, the lower is the likelihood of having coastal management problems. Across the world, increasingly

the scientific community is of the opinion that particularly on the coast it is preferable to "work with Nature" rather to try to "fight against Nature." This approach is also akin to the approach of the Precautionary Principle which advocates that if the coastline is eroding, particularly due to human induced causes, it is preferable to address the root causes of the problem and try to return to the original, natural, stable state of the coastline, rather than to attempt to re-engineer the coastal environment which results in perpetual alteration of the coastal environment with all its accompanying negative impacts.

69. Despite the recognition by the Union and State Governments, as well as that of related Government agencies such as the CWPRS and the NIOT, private and professional consultancy firms, local communities, civil society groups that "soft" engineering measures such as beach nourishment, which are environmentally and socially friendly and increasingly adopted world-wide, should be adopted tackle coastal erosion, especially to mitigate and reverse human induced coastal erosion, there is however a lack of well-defined scientific and technically sound processes and systems for sand nourishment of eroding beaches which the Government and their respective agencies can follow or implement. As a result of the lack of such well-defined processes and systems, Governments and their agencies fall back upon past experience, even though it is obsolete and go about "business as usual." In this regard, it is also important to note that the "business as usual" favours vested interests, such as the consultants who get to design more and more coastal structures as they cause more and more erosion, the quarry owners, the transporters and the contractors who keep on benefitting

as long as coastal structures need to be built even though it is at the cost of the coastal environment.

70. Seeing the unwillingness of concerned agencies to restore and nourish the beaches, very often the local communities that have at first lost their livelihoods when their beaches have eroded, eventually get desperate when nothing is done to control the erosion particularly when they start losing their habitations. As a last and desperate measure to save their homes, these communities start to demand that their homes be immediately protected in whichever way possible, even with the use of hard structures such as seawalls and even if it is at the cost of the coastal environment. The measures, particularly those that are environmentally destructive, that are demanded in a state of desperation by the local communities and followed out of popular demand are not necessarily the best for their livelihoods, the environment, the society at large and the future generations, especially in the long term.

71. Since the construction of the harbor, seawalls and groynes commenced in Puducherry and Tamil Nadu, numerous civic groups, including Coastal Action Network, have complained to the Government of Puducherry and Government of Tamil Nadu and warned of the worsening environmental and economic disaster. Both governments have ignored these warnings and continued to build hard structures, in the Cuddalore, Puducherry and Villupuram Districts, disrupting the natural flow of coastal sediment, damaging their own coast and their neighbor's, in complete disregard of the economic, social, and environmental consequences of this construction.

72. The Government of Tamil Nadu currently proposes to build a series of 12 more groynes from Chinnamudalaiyar Chavadi to Bommiyarpalayam, as well as additional seawalls and groynes to the south of Puducherry, as far south as Cuddalore. Some of the work has already commenced. The Government of Tamil Nadu has not sought or been given prior permission and approval by the Ministry of Environment and Forests, Government of India to construct these groynes.

73. On or about 18 November 2012, the Government of Tamil Nadu began dumping rocks on the coast at Chinnamudalaiyar Chavadi, thereby commencing construction of a planned 180m groyne. This activity will cause further damage to the coastline, and to the lives and livelihoods of those who live along the coastline, if it is allowed to proceed. The Government has, without considering the hazards of undertaking such activity has commenced and is continuing with the construction of the groyne, the fact that the detriment caused to the coastal environment is not limited only to that particular sector has not, even been considered. No proper environmental impact assessment has been done by the concerned authorities, in violation of governing laws and violating rights guaranteed under Article 21 of the Indian Constitution. The economic consequences of the damage caused by the construction of the groyne will be disastrous.

74. On 27th December 2012 the Puducherry Coastal Zone Management Authority (PCZMA) wrote to the MoEF requesting it to impress upon the Government of Tamil Nadu to refrain from undertaking ad hoc coastal protection measures such as seawalls and groynes without consulting and taking the consent of the Government

of Puducherry and required CRZ clearances. The PCZMA also expressed its apprehension that the proposed and on-going coastal protection measures erected in adjacent Tamil Nadu would cause erosion of the Puducherry coastline. Moreover, the PCZMA also expressed the need to follow the recommendations of the stated NIOT report which suggests that a common shoreline management plan for the entire Puducherry and adjacent Tamil Nadu coastline should be prepared so that short-term and long-term strategies can be drawn considering the coast in total.

75. According to the CRZ Notification 2011, Section 3, (iv), activities that disturb the natural course of seawater such as for erosion control are prohibited if constructed without an Environmental Impact Assessment study. Section 4.2, (i), (c) of the same notification also states that the procedure for clearance of such activities should be undertaken after comprehensive EIA with cumulative studies for projects in the stretches classified as low and medium eroding by MoEF based on scientific studies and in consultation with the State Governments and Union territory Administration. The seawalls and groynes being built by the GoTN at Chinnamudalaiyar Chavadi Kuppam and in Villupuram District and Devanampattinam in Cuddalore District are being undertaken without an EIA, neither with a comprehensive EIS with cumulative studies and without consultation with the State Governments and Union territory Administration and are therefore in violation of CRZ Notification 2011.

76. According to the Environmental Impact Assessment Notification 2006, the construction of seawalls and groynes being built by the GoTN at Chinnamudalaiyar Chavadi Kuppam and in Villupuram District and Devanampattinam in Cuddalore District are classified as "Category A"

projects as they fall within 10 km of the inter-state boundary and would therefore require an EIA. The natural flow of sediment and beach sand along the coast is an essential phenomenon and process which supports natural habitats, flora and fauna, human populations and their fundamental right to life and livelihood. Coastal sediment is a public good that forms the very foundation of the sandy coastal environment, without which none of the sandy coastal environments can be sustained. The human induced loss of sediment from the coast and the resulting erosion and destruction of coastal habitats therefore directly results in the violation of the fundamental right to life and livelihood of all that which is dependent on coastal sediment. Just as water, food, air, light, etc., are an essential part of the life and livelihood of every citizen of this country, similarly coastal sediment is equally an essential public good which is a part of the life and livelihood of all that which depends on the coastal environment. The human induced loss of coastal sediment within and even across state boundaries therefore results in the violation of the fundamental right to life and livelihood of all that which depends on the coastal environment. Numerous representations on the above issues described above, particularly such as the human induced coastal erosion, mitigation and restoration through sand nourishment, restoration of the sandy beach ecosystems and the livelihoods of the local communities, etc., spanning a period of more than a decade have been made by several citizen and civil society groups. However, not only is the human induced erosion of the coast increasing unabated, but it is even being aggravated by adhoc, unscientific and unsustainable coastal management measures which are arbitrary and illegal. The Respondents have not undertaken any scientific studies with regard to the exacerbation of erosion due to the groynes already constructed, and erosion is rapidly progressing with no intervention to prevent the same on the part of the statutory authorities.

77. On 29th Sep 2012, a representation was submitted to the District Collector, Cuddalore, the 2nd applicant submitted representation to several authorities including the respondents herein. On 06th Jan 2012, a representation was submitted to the Government of Tamil Nadu, requesting them to refrain from construction of groynes. On 20th Nov 2012 and 12th Dec 2012, further representations were made by the applicants to the authorities, requesting them to take appropriate action. However, no reply has been received from the authorities and the damage caused to the environment due to the indiscriminate construction of hard structures along the coast continues to this day.

Stand of Puducherry Coastal Zone Management Authority (PCZMA) and MoEF&CC

78. Replies have been filed by contesting respondents. It is not necessary to refer to all the replies. It will suffice to refer to the affidavit filed by Puducherry Coastal Zone Management Authority (PCZMA) on 06.10.2021 and the reply filed by the MoEF&CC. PCZMA refers to comprehensive Shoreline Management Plan (SMP) for Puducherry in May, 2015 by the National Institute of Ocean Technology (NIOT), Ministry of Earth Sciences, after monitoring the coastal processes responsible for the shoreline changes from 2012. The SMP was submitted to the MoEF&CC. NIOT designed a hybrid solution for the first time in the country with two reefs and sand nourishment for restoring the eroding beach along Puducherry town. The proposed hybrid solution involved the following:-

i. Construction of one Nearshore Wedge Reef opposite to the Chief Secretariat on the north end of Puducherry town foreshore, with the crest at Chart Datum.
ii. Construction of one Offshore Reef placed at the south end, at 300 m north of the pier, with the crest at 1 m above Chart Datum.
iii. Sand nourishment using 4,50,000 m3 of sand between northern and southern reef along the Coastline of Pondichery Town and Gandhi Statue

79. The above project has been adopted in Puducherry for which CRZ Clearance has been granted.

80. The executive summary in the report of the NIOT is as follows:-

> *"Many beaches along East coast of India are subjected to erosion, which threatens habitat, property, public infrastructure, and the tourist industry. Loss of sand can be attributed natural changes (sea level rise, storms, and more recently persistent low pressures due to climate change) and man-made activities (harbors, jetties, seawalls, groins, dredging of tidal inlets and damning of rivers). Pondicherry coast is not exceptional and after construction of Pondicherry harbour, coast north of harbour 1s subjected to sea erosion. Initially, sand bypassing was carried out by harbour authorities to prevent down drift erosion and to maintain channel free from siltation. Later, discontinuing of sand bypassing due to various technical reasons, lead to erosion on Pondicherry city. UT Pondicherry and Tamil Nadu State Government resorted to short term measures to protect the coast from erosion. Seawall of length 6 Km was constructed by UT Pondicherry, which covers city of Pondicherry and the coastal stretch (2 km) from Sodhanaikuppam to Thanthriyankuppam was protected groin field combined with seawall by Tamil Nadu government. The erosion problem shifted further north, Chinnamudalaiyar Chavadi is experiencing increased erosion and many buildings were lost to sea. Highly eroding fishing hamlet, north of Chinnamudalaiyar Chavadi, and Chinnakalapettai village in UT Pondicherry were also protected by seawall. As on date, 8 km length of the coast was protected by seawall and groin field along Pondicherry coast by UT Pondicherry and Tamil Nadu Government. The above solutions could protect the coast under threat but the authorities and stake holders need an integrated long-term solution for protection of coast and restoration of natural beach.*
>
> *Since, the available information on Pondicherry coast is not sufficient for working out suitable strategies; NIOT was consulted by both UT Pondicherry and Tamil Nadu government to work out long*

term/ short term strategies for management of coast from erosion and impact of cyclones. ***NIOT has initiated studies to evolve strategies for protection of Pondicherry coast under the project "Demonstration of Shore Protection Measures through Pilot project", with financial support from Ministry of Earth Sciences. NIOT has taken p task of developing strategies for protection of Pondicherry coast with objectives: 1) Assessment of status of existingprotection measures and its performance 2) To Understanding the processes responsible for shoreline changes through monitoring waves, tides, currents, sediment characteristics and coastal morphology 3) Analysis of long/short term trends of shoreline along Pondicherry coast and 4) Development of shore protection measures through numerical models. The first three activities were completed and documented in the present report. The final report with strategies for protection of coast will be arrived at based on the discussion with the governments of Tamil Nadu and UT Pondicherry and stake holders.***

The study aims at understanding various dynamical aspects of coast (water level variations, currents & circulation, tides, waves, bathymetric variations, sediment transport, shoreline changes etc.) to develop hind cast, now cast and forecast models on shoreline changes in priority areas for identification of vulnerable areas of erosion/ accretion to arrive at remedial measures for protection of coastline from natural and human perturbations. The strategy proposed in the present study aims at obtaining a comprehensive picture on shoreline changes along Pondicherry coast and to take remedial measures for shoreline management along the stretch.

The study area with coastline length of 18 km was divided into four distinct zones, namely 1) Pondicherry harbour and adjoining areas, 2 km 2) Pondicherry city, protected by seawall, 6 km 3) Groin field, 2 km and 4) Open coast, 8 km. The shoreline changes in these four zones were analyzed using remote sensing data and field measurements. The result indicate that the average rate of erosion and accretion is 4m/yr and 5m/yr respectively and the coast needs immediate attention for its protection from natural causes or man-1made activities. The estimated rate of net drift would be in the order of 0.28 -0.30 million cum, which needs to be confirmed by detailed shoreline monitoring.

Coastal processes responsible for shoreline changes were monitored during 2012, where data on winds, waves, tides, currents, sediments, bathymetry etc. were collected between Pondicherry Port and Kalapettai village, covering a coastline of 18 km. Seasonal variations on water levels, wave climate, currents and circulation sediment transport, shoreline changes etc. were studied. The measurements made indicated that the tide propagates from south to north. Currents measured upto a depth of 20 m were found to be seasonal, northerly during SW monsoon and southerly during NE monsoon. The average currents during SW and NE monsoon would be 0.3m/s and 0.5m/s. The near shore currents generated by waves follow pattern of coastal Currents In Tamil Nadu coast, which is added *advantage in developing snore protection measures. Wave climate indicate that 70% of the waves approach the coast from SE direction and the remaining 30% from NE direction.*

Pondicherry, known for tourism/recreation, has lost its natural beach due to construction of seawall. ***It is advisable to restore natural beach by implementing beach nourishment. Initial estimates indicate that sand to extent of 3.0 million cum need to be placed north of harbour for length of 600 m near the Gandhi statue. The above option not only helps in gaining natural beach but also helps in controlling the erosion of northern coast. The detailed design of beach nourishment scheme can be worked based on the discussions. Also, eco-friendly techniques and "soft engineering measures" could be implemented along with beach nourishment for retaining of sand and also to restore ecological functions of the coast****.*

Short-term solutions may need to be implemented, but these solutions have to take into account the long-term solutions and should be "no-regret" solutions.

A long-term and permanent solution can be found if both the Tamil Nadu and Pondicherry governments jointly work towards a common, long-term and sustainable shore restoration strategy.”

81. Summary and recommendations in the report are as follows:-

“Summary and Reeommendations

The coast along Pondicherry and the adjacent areas of the Villupuram district has been experiencing severe erosion for the past 20 years. Natural causes interception of littoral drift by the harbour at Ariyankuppam village, Pondicherry constructed in 1990 and the subsequent construction of coastal defence structures such as seawalls and groins caused erosion in this and groins regions. Pondicherry and Tamil Nadu governments made several attempts to protect the coast under threat using options like seawalls and groins. Though these protection measures have offered some relief to the coast under threat, adjacent parts of coast areas are eroding, more unstable and are constantly under threat.

There is a need for a wel1-defined plan that seeks to treat the shoreline and the issue of erosion in a more integrated, sustainable and strategic manner. This can be achieved by a Shoreline Management Plan (SMP), which considers the issues at a reasonable scale and focuses on restoring the natural sandy beaches. Policy makers, engineers and stakeholders seek a long term solution to restore the sandy beaches of this entire affected region. The basic questions which need to be answered and understood before attempting any such coastal restoration scheme are following:

1. ***Present status of coast (geomorphic setting and functional performance of already implemented protection measures)***
2. ***Coastal processes along this coast in relation to proposed coastal restoration schemes.***
3. ***Priorities of policy makers and stakeholders***
4. ***Requirements of stakeholders***
5. ***Economical, environmental and social sustainability of proposed restoration measures.***

Considering the above, the overall objective of the coastal restoration project should be to address the coastal restoration needs through the implementation of economically viable restoration works using environmental and socially appropriate solutions. This report describes the present status of the coast and the performance of existing coastal protection schemes. The data on sea bathymetry, land topography, hydrodynamics (tides, waves, currents and sediment characteristics) and shoreline changes was collected for analyzing the coastal processes. A joint meeting with Tamil Nadu and Pondicherry governments is required to draw strategies for coastal restoration measures where various technical alternatives can be analysed in relation to the priorities of the government keeping in view that the solution adopted should be sustainable, long term and permanent without affecting the coastline located further north.

The analysis of long-term shoreline change data indicate that the average rate of Shoreline recession and progression over a period of 30 years is in order of 4 m/yr and 5 7yr respectively. However, localized shoreline change rates. recession specifically, of 50 1n in a season were observed. However, the rate of shoreline change and/or erosion is dependent on gradient of sediment transport along the coast, which is dependent on Configuration of the coast, near shore current and availability of the sediments.

The 18 km length of coastline of Pondicherry was divided into four zones for analysis. The first zone (Zone A) covering a length of 3.5 km represents the zone of direct influence of the Pondichery harbour. The sand has accumulated up to the tip of the south breakwater with maximum accretion of 180 m and the sediment started bypassing to the north. The northern side of the harbour is protected by a seawall and sediment deposition is noticed, during the NE monsoon due to the southerly drift. The maximum erosion is about 40 m at distance of 600 m from north breakwater from 1991 to 2000. The second zone (Zone B- 4 km), which is part of Pondicherry township is protected by a seawall. Securing at the foot of the seawall is noticed during active monsoon. The third zone (Zone C- 2.5 km) is protected by a series of disjointed groins. These groins were constructed during 2005-2007 and. accretion to an extent of 90 m is noticed at northern longest groin located at Thathiriyankuppam. The accretion at all groin compartments indicate availability of sediments along the Pondicherry coast during both monsoons.

The CWPRS (1978) has reported that the net drift was estimated to be about 500,000 cu.m. at the time of design of Pondicherry Harbour but the present estimated rate of net drift by us would be in the order of 2,00,000 - 2,80,000 cu m, which needs to be confirmed by detailed shoreline monitoring. The coast north of longest groin at Chinnamudalaiyar Chavadi village has experienced increased erosion and shoreline recession during2008to an extent of 70 m. South of this coast regained some lost material during 2012 due to southerly drift and bypassing of sediments from the groin with a net accretion of 20 m. The Zone D with a length of 8 km is not protected by major scheme and maximum erosion observed 1991-2010 is around 25m. A sea wall of length 165 m was constructed at village Chinnakalapettai to protect the coast from erosion.

The following are major observations for arriving at coastal restoration strategies for both the Pondicherry and adjacent Tamil Nadu coast.

- ***Pondicherry has been known as a beautiful beach town. The beaches here, particularly along the famous beach road were used for all kinds of activities by a large cross-section of people. Children chased crabs and looked for interesting shells. The famous Masi Magam festival of Pondicherry relied on the big beach where the chariots of all the gods from all the temples near and far would come. With the beach almost gone and the rocky sea wall, all these little everyday pleasures of each and every resident of Pondicherry and all those who throng to its shores, have been snatched away.***

- ***The basic objective of shore restoration projects moderate the long-term average erosion rate and shoreline change from man-made causes, which can be achieved only if the natural dynamics of the coast is well understood.***

- ***The medium term analysis of shoreline change data from 1991 -2012, indicate that this region needs immediate attention.***

- ***Protection schemes till date have been implemented in isolation both in Pondicherry and Tamil Nadu, a common phenomenon even in developed countries. This has happened because of various constraints like scientific/engineering understanding of nature, economics of the scheme t be implemented, institutional issues, lack of interstate coordination and acceptance by stakeholders. It is recommended that short-term and long-term strategies can be drawn.considering the coast in total by Pondicherry and Tamil Nadu Government. The short-term strategies required at specific sites can be designed and***

integrated in long-term strategies, if a shoreline management plan is prepared.

- ***Pondicherry harbour is causing a deficit in sediment supply to the northern coast. Sand bypassing carried out by harbour authorities for certain period could maintain the beach north of the harbour. Later, discontinuing the sand bypassing resulted in loss of beaches in the northern coast. The recent analysis of satellite data suggests that parts of the littoral sediments are bypassed naturally to northern coast. While designing the shore restoration scheme for Pondicherry coast, the configuration of harbour and its relation to natural bypassing of sand at harbour should be studied.***

- ***Pondicherry wave climate is influenced by both the SE and NE waves With occasional cyclonic storms crossing the coast. The maximum surge level observed above tide is 0.7m with a tidal range of 1.2 m. The waves approaches from SE direction from April September with mean direction 135 deg, while during NE mo1nsoon. the direction is 90 deg. The coastal currents are seasonal, directed to north during SW monsoon and south during NE monsoon. The average currents during SW and NE monsoon would be 0.3m/s and 0.5 m/s. The near shore currents generated by waves follow similar pattern like coastal currents in Tamil Nadu coast, which is an added advantage in developing Common shore restoration measures. A detailed study conducted at Vellar estuary and Ennore shows shoreline change governed by wave climate and tidal influence is insignificant. Low pressure systems 1ike events of 2007 can cause significant damage to coast and some of its changes could be permanent. The coastal protection scheme seawall built along the Pondicherry town for length of 6 km need to be assed carefully to avoid further damage during cyclone or low pressure periods.***

- ***Pondicherry is known for its tourism/recreation, it is advisable t0 restore the natural beach by implementing beach nourishment. At Ennore, sand dredged from harbour to an extent of 3.5 million cum was placed. on, north of harbour to prevent down drift erosion. The performance of beach nourishment was assessed based on long-term data at Ennore which shows nourishment has supplied sand to northern coast for period of 5 years and coastline was stable even after the construction of harbour. Initial estimates indicate that sand to the extent: of 3.0 million cum needs to be placed north of the harbor for length of600mnearthe Gandhi statue. The above option will not only help in gaining a natural beach but also help in controlling the erosion of the northern coast. The detailed design of beach nourishment scheme can be worked out based on discussions. Also, eco-friendly techniques and "soft***

engineering measures" to stabilize the coast could be implemented along with beach nourishment for retaining the sand and to restore the ecological functions and services that are provided by sandy beach ecosystems as well as enhance livelihood opportunities for the fishing communities and increase value to the coast.

- ***A long term and permanent solution can be found if both the Tamil Nadu and Pondicherry Governments jointly work towards a common; long-term and sustainable shore restoration strategy.***

- ***Short-term solutions may need to be implemented, but these have to take into account the long-term solutions and should be "no-regret" solutions.***
- ***Worldwide there is now increasing examples of replacement of hard structures like seawalls with softer options Such as beach nouishment, Sand bypassing, dune planting and offshore submerged reefs. Thus, the general principle of "working with nature" Would be a better approach for cost-effective and sustainable coastal protection measures. Pondicherry needs to consider modern protection practices which achieve more effective and sustainable means of coastal protection while also addressing local amenity and economic development aspects. It is most important to ensure that the natural movement and flow of sediment along the shoreline is maintained.***

- ***All Shore protection schemes should be monitored scientifically under technical guidance of expert institutes by Tamil Nadu and Pondicherry governments for improvement in its performance. The crest of berm data collected by Tamil Nadu PWD do not cover any location along Pondicherry coast. The closest locations considered for analyzing the data along this coast are Devanampattinam and Oyyalikuppam at south and north of Pondicherry respectively.***

- ***Given the social and economical importance of the Pondicherry beaches, the coastal restoration option should consider the protection of land, buildings, groundwater, ecology, livelihoods and public and private infrastructure against future loss and damage caused by erosion and storms.***

- ***The beach restoration will primarily benefit the coastal dwellers living along the Pondicherry and nearby Tamil Nadu coast including fishing households, the owners, operators and employees of fishing boats, hotels and other tourism related businesses and their employees. But mostly it will benefit all the residents of this peaceful coastline whose young children have never even seen its beautiful beaches. No One expected that waves due to monsoon or cyclone take away the natural beach."***

Reply of MoEF&CC

82. Reply of the MoEF&CC dated 02.02.2021 deals with the status of updation/revision of CZMPs as follows:-

> *"2. That in exercise of the powers conferred by the sub-section (1) and Clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of the sub-rule 5 of the Environment (Protection) Rules, 1986, Ministry of Environment and Forest had notified the Coastal Regulation Zone Notification, 1991 on 19th February, 1991, which, inter-alia, provided classification of Coastal Regulation Zone (hereinafter referred to as CRZ) areas and norms for regulating developmental activities therein. This Notification was subsequently amended from time to time.*
>
> *3. That it is submitted that in supersession of the* ***CRZ Notification, 1991, the Coastal Regulation Zone Notification, 2011 was notified on 6 January, 2011 for regulation of developmental activities along the coastal stretches and to ensure the livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches.***
>
> *4. The validity of the Coastal Zone Management Plans (hereinafter referred to as CZMPs) approved under CRZ Notification, 1991 was extended from time to time, the last such extension being upto 31.07.2018, pending preparation and subsequent approval of fresh CZMPs under the CRZ Notification, 2011. All the developmental activities in the CRZ areas of coastal States were required to be regulated as per the above mentioned notifications and within the framework of approved CZMPs.*
>
> *5. It is humbly submitted that the CZMPs of all coastal States except State of Goa has been approved under the provisions of the CRZ Notification, 2011.*
>
> *6. That it is submitted that in supersession of the CRZ Notification, 2011, the Coastal Regulation Zone Notification, 2019 was notified on 18th January, 2019 for regulation of developmental activities along the coastal stretches and to ensure the livelihood security to the fisher communities and other local communities, living in the coastal areas, to conserve and protect coastal stretches, specifically focused on conservation and management plans of Ecologically Sensitive Areas (ESAs) which did not feature in the CRZ Notification,2011.*
>
> *7. It is humbly submitted that the High Tide Line (HTL) has been mapped out and standardized for the entire coast of the country unlike the HTL earlier allowed to be demarcated by one of the seven authorized agencies, that too only for identified stretches/sites, and*

thereby bringing in standardization and authenticity and removing arbitrariness.

8. It is submitted that the Hazard Line for the entire coast of the country has also been mapped and is required to be incorporated in CZMPs of the coastal States or Union territories.

9. It is humbly submitted that the CRZ Notification, 2019 shall, however, come in force only after the respective CZMP framed to the CRZ Notification, 2011 have been revised/updated by the States/UTs, as per the provisions of the new CRZ Notification and approved by the Ministry of Environment, Forest & Climate Change. Para 6 (i) of CRZ Notification, 2019 inter alia states as under:

> *"All coastal States and Union territory administrations shall revise or update their respective coastal zone management plan (CZMP) framed under CRZ Notification, 2011 number S.O 19(E), dated 6th January, 2011, as per provisions of this notification and submit to the Ministry of Environment, Forest and Climate Change for approval at the earliest and all the project activities attracting the provisions of this notification shall be required to be appraised as per the updated CZMP under this notification and until and unless the CZMPs is so revised or updated, provisions of this notification shall not apply and the CZMP as per provisions of CRZ Notification, 2011 shall continue to be followed for appraisal and CRZ clearance to such projects."*

Before finalizing the CZMP concerned State/ Union Territories/ Coastal Zone Management Authorities are required to adopt due procedure in preparation of CZMPs as stipulated in Para 6 (ii) of CRZ Notification, 2019 which includes public consultation. Para 6 (iii) of said notification inter alia states as under:

> *"The coastal States and Union territories shall prepare draft CZMP in 1:25,000 scale map identifying and classifying the CRZ areas within the respective territories in accordance with the guidelines given in Annexure-IV to this notification, which involve public consultation."*

A true copy of CRZ Notification, 2019 is annexed herewith and marked as ANNEXURE-R/1.

10. It is humbly submitted that the National Centre for Sustainable Coastal Management (hereinafter referred to as NCSCM) made a presentation on the status of the updation/revision of CZMPs) prepared based on provisions of CRZ Notification, 2019, in the 40 meeting of National Coastal Zone Management Authority (NCZMA) held on 28.08.2020, as under:

S.No.	State/UT	Status of Approved CZMP2011	Status of Draft CZMP 2019	Agency preparing CZMP-2019	Time Required to Complete
1.	Maharashtra	Approved	COMPLETED Public hearing completed in all districts other than Palghar and Sindhudurg districts	NCSCM	COMPLETED
2.	Odisha	Approved	COMPLETED Public hearing completed	ORSAC/ SAC	COMPLETED
3.	Andhra Pradesh	Approved	80% work Completed including Buffering of CRZ boundaries	NCSCM	4 MONTHS-DEC 2020
4.	Karnataka	Approved	50% work Completed including Buffering of CRZ boundaries	NCSCM	4 MONTHS-DEC 2020
5.	Puducherry	Approved	30% work Completed including Buffering of CRZ boundaries	NCSCM	3 MONTHS-NOV 2020
6.	Daman&Diu	Approved	50% work Completed including Buffering of CRZ boundaries	NCSCM	3 MONTHS-NOV 2020
7.	Tamil Nadu	Approved	20% work completed	NCSCM	5 MONTHS-JAN 2021
8.	Gujarat	Approved	20% work completed	NCSCM	6 MONTHS-FEB 2021
9.	Kerala	Approved	In progress Being monitored by Kerala High Court	NCSCM	Status to be obtained from NCESS
10.	West Bengal	Approved	Pending. Status not known	IESWM	Status to be obtained from IESWM
11.	Goa	Draft published in website for public hearing. Revision based on amendments, in	Pending	Not Known	Amendments to CRZ Notification 2011 notified on 1st May 2020

		progress (NCSCM)			
12.	*Andaman & Nicobar Islands*	*ICRZ pans:9 Islands* *IIM Plans:5 Islands Approved*	*ICRZ Plans of Great Nicobar & Little Andaman Islands completed and submitted to ANCZMA for public hearing*	*NCSCM*	*6 MONTHS-FEB 2021*
13.	*Lakshadweep Islands*	*Approved*	*Revision of IIMPs of Suheli, Kadamat & Minicoy Islands in progress*	*NCSCM*	*6 MONTHS-FEB 2021*

> *11. It is humbly submitted that the answering Ministry is yet to receive the draft CZMPs updated/revised as per the provisions of the CRZ Notification, 2019 from all the coastal State Governments for further consideration and approval.*
>
> *12. It is further humbly submitted that the CRZ Regulations are to be implemented and monitored including violations thereof by the concerned State Coastal Zone Management Authority in accordance with the proved CZMPs of the respective region of the coastal state.”*

Consideration of the Issue, finding and Directions

83. We have given due consideration to the issue of protection of the beaches from human induced erosion caused by hard structures. It is a fact that these hard structures may prevent erosion at the said stretch temporarily but the adverse impact of such measures are felt upstream or downstream where erosion starts. Thereby such hard measures only transfer the problem of shoreline change until and unless a holistic study is undertaken keeping in view that sediment cells and appropriate scientific measures taking into consideration both soft and hard. The problem exhaustively highlighted by the applicant, noted above raises substantial question of environment. We are satisfied that the same needs to be addressed by all coastal States/UTs for protection of beaches from human induced erosion caused by hard structures. We find that

Puducherry model of SMP based on report of NIOT submitted in March 2015 addresses the issue comprehensively and can be adopted subject to any suitable change based on further study in terms of the recommendations in the said report. As suggested in the report, there is need to replace hard structures like seawalls, Groynes etc. with softer options such as beach nourishment, sand bypassing, dune planting, offshore submerged reefs, etc. Thus, the general principle of "working with nature" would be a better approach for cost-effective and sustainable coastal protection measures. There is no objection to the said model by any of the appearing parties. Further, the Tribunal also notes that depiction of high, Medium and low erosion stretches along the coast line is mandatory in the CZMPs. The CRZ Notification, 2019 regulates foreshore developmental activities based on these parameters as well. Like ports and harbours are prohibited in high erosion stretches. We also note that inspite of the CRZ Notification being issued in Jan, 2019, the CZMPs have not been finalized and approved for 11 State/UT. This is gross violation of Hon'ble Supreme Court judgment in *Indian Council For Enviro Legal ... vs Union of India & Ors.*, (1996) 5 SSC 281. Accordingly, we direct Chief Secretaries of the Costal State/UT to finalise the CZMP and get them approved by MoEF within 2 months. The approved CZMP shall contain the parameters as listed in the CRZ 2019 Notification including High, Medium and Low erosion stretches for such erosion prone areas. SMP shall be prepared as illustrated by NIOT for such erosion prone areas. We further direct preparation/updation of their SMPs for such identified eroding stretches shown in the CZMPs within six months. Pending preparation/updation of such SMPs by the Coastal States/UTs, no further hard structures for erosion control be raised or constructed.

The application is disposed of.

A copy of this order be forwarded to all the Coastal States/UTs and MoEF&CC for compliance by e-mail.

Appeal No. 18/2017 (SZ)

84. As noted earlier challenge in the appeal is to the proposed construction of series of 19 Groynes from Ennore to Ernavoorkuppam in Madhavaram Tuluk of Tiruvallur District, Tamil Nadu by the Public Works Department (WRD). The main ground challenge of the CRZ Clearance is that construction of groynes in coastal area has adverse impact by obstructing littoral drift. The impugned clearance ignores this aspect. The impugned CRZ clearance itself mentions that the same is subject to further orders in O.A. 04/2013 which was pending on the date when CRZ Clearance was granted.

85. While dealing with the O.A. No. 4/2013 (SZ), we have approved the report of the NIOT recommending preparation of SMP which should be environmentally compatible, in the manner suggested and discussed above. We have also directed all the Coastal States/UTs in the Country to prepare their respective SMPs accordingly. The impugned CRZ Clearance is not sustainable in view of above discussion. The same is accordingly set aside without prejudice to fresh clearance being granted in accordance with the approved SMP.

The appeal is allowed in above terms.

Adarsh Kumar Goel, CP

K. Ramakrishnan, JM

Sudhir Agarwal, JM

Pushpa Sathyanarayana, JM

Dr. Satyagopal Korlapati, EM

Prof. A. Senthil Vel, EM

April 11, 2022
O.A. No. 04/2013(SZ)
With Appeal No.18/2017(SZ)
A

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

PUBLIC INTEREST LITIGATION WP NO.29 OF 2022

THE GOA FOUNDATION, THR. ITS SECRETARY DR.CLAUDE ALVARES ... PETITIONER

Versus

STATE OF GOA, THR. ITS CHIEF SECRETARY AND 5 ORS ... RESPONDENTS

Ms. N. Alvares with Mr. Om D'Costa, Advocates for the Petitioner.

Ms. M. Shaikh, Advocate for the Respondent No.2.

Mr. Z. D'Souza h/f.Mr. S. Mahambrey, Advocate for the Respondent No.3.

Mr. Parag Rao and Ms. S. Drago, Advocates for the Respondent No. 4.

Mr. I. Agha and Ms. V. Fernandes, Advocate for the Respondent No. 5.

Ms. Sapna Mordekar, Additional Govt. Advocate for the Respondent No.6.

CORAM:- G. S. KULKARNI &
BHARAT P. DESHPANDE, JJ.

DATED :- 7th October, 2022

P.C.:

Permission to delete respondent No.5. Amendment to be carried out forthwith.

True Copy

2. After this petition was heard for some time, we are of the opinion that the issues which are canvased in this petition are issues which can be effectively agitated before the National Green Tribunal by the petitioner. We accordingly dispose of the petition with liberty to the petitioner to approach the National Green Tribunal.

3. All contentions of the parties are expressly left open.

4. Disposed of accordingly.

5. No costs.

BHARAT P. DESHPANDE, J. **G. S. KULKARNI, J.**

MEENA VISHAL BHOIR
Digitally signed by MEENA VISHAL BHOIR
Date: 2022.10.10 19:09:00 +05'30'